

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

UNITED STATES COPYRIGHT ROYALTY JUDGES

WASHINGTON, D.C.

Copyright Royalty Board  
JUL 10 2012  
Received  
299

-----X  
In the Matter of: ) Docket No. 2011-1  
Determination of Rates and Terms ) CRB PSS/Satellite II  
for Preexisting Subscription )  
Services and Satellite Digital ) Volume II  
Audio Radio Services ) Pgs. 299 - 628  
-----X

Washington, D.C.

Wednesday, June 6, 2012

The following pages constitute the continued proceedings held in the above-captioned matter, held at the Library of Congress, Madison Building, 101 Independence Avenue, Southeast, Washington, D.C., before Cindy L. Sebo, RMR/CRR/CSR/RPR/CCR/RSA of Capital Reporting Company, a Notary Public in and for the District of Columbia, beginning at approximately 9:32 a.m.

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

300	<p>1        A P P E A R A N C E S</p> <p>2    Copyright Royalty Tribunal:</p> <p>3        CHIEF JUDGE SUZANNE M. BARNETT</p> <p>4        JUDGE WILLIAM ROBERTS</p> <p>5        JUDGE STANLEY C. WISNIEWSKI</p> <p>6    On behalf of SiriusXM:</p> <p>7        R. BRUCE RICH, ESQUIRE</p> <p>8        TODD LARSON, ESQUIRE</p> <p>9        MIRANDA S. SCHILLER, ESQUIRE</p> <p>10       RANDI W. SINGER, ESQUIRE</p> <p>11       SABRINA A. PERELMAN, ESQUIRE</p> <p>12       Weil, Gotshal &amp; Manges LLP</p> <p>13       757 Fifth Avenue</p> <p>14       New York, New York 10153-0119</p> <p>15       212.310.8170</p> <p>16       bruce.rich@weil.com</p> <p>17       todd.larson@weil.com</p> <p>18       miranda.schiller@weil.com</p> <p>19       randi.singer@weil.com</p> <p>20       sabrina.perelman@weil.com</p> <p>21</p> <p>22</p>	302	<p>1       A P P E A R A N C E S (Continued):</p> <p>2    On behalf of Music Choice:</p> <p>3        PAUL M. FAKLER, ESQUIRE</p> <p>4        MATTHEW TROKENHEIM, ESQUIRE</p> <p>5        Arent Fox LLP</p> <p>6        1675 Broadway</p> <p>7        New York, New York 10019</p> <p>8        212.457.5445</p> <p>9        fakler.paul@arentfox.com</p> <p>10       trokenheim.matthew@arentfox.com</p> <p>11       - and -</p> <p>12       MARTIN F. CUNNIFF, ESQUIRE</p> <p>13       Arent Fox LLP</p> <p>14       1050 Connecticut Avenue, Northwest</p> <p>15       Washington, D.C. 20036-5339</p> <p>16       202.715.8465</p> <p>17       cunniff.martin@arentfox.com</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
301	<p>1       A P P E A R A N C E S (Continued):</p> <p>2    On behalf of SoundExchange:</p> <p>3        DAVID A. HANDZO, ESQUIRE</p> <p>4        MICHAEL B. DESANTIS, ESQUIRE</p> <p>5        JARED O. FREEDMAN, ESQUIRE</p> <p>6        GARRETT A. LEVIN, ESQUIRE</p> <p>7        1099 New York Avenue, Northwest</p> <p>8        Suite 900</p> <p>9        Washington, D.C. 20001-4412</p> <p>10       202.639.6085</p> <p>11       dhandzo@jenner.com</p> <p>12       mdesantis@jenner.com</p> <p>13       jfreedman@jenner.com</p> <p>14       glevin@jenner.com</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	303	<p>1       C O N T E N T S</p> <p>2    WITNESSES:</p> <p>3        ROGER G. NOLL        DIRECT    CROSS    REDIRECT</p> <p>4        By Mr. Handzo        307, 432</p> <p>5        By Mr. Rich        456</p> <p>6</p> <p>7        JAMES E. MEYER        DIRECT    CROSS    REDIRECT</p> <p>8        By Mr. Rich        510        616</p> <p>9        By Mr. DeSanctis        570</p> <p>10</p> <p>11    SIRIUSXM TRIAL EXHIBITS: *        MARKED</p> <p>12        ADMITTED</p> <p>13        1        461        474</p> <p>14        2        472        474</p> <p>15        3        473        483</p> <p>16        4        474        483</p> <p>17        5        513        521</p> <p>18        6        571        ---</p> <p>19        7        580        582</p> <p>20        8        589        591</p> <p>21        9        595        598</p> <p>22        10        608        ---</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

304	306
<div>1 SOUNDSEXCHANGE TRIAL EXHIBITS: * MARKED ADMITTED</div> <div>2 1 322 ---</div> <div>3 2 377 ----</div> <div>4 3 414 ----</div> <div>5 4 443 ----</div> <div>6 5 450 ----</div> <div>7</div> <div>8</div> <div>9</div> <div>10 (* Exhibits Retained by Counsel.)</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div>	<div>1 motion was granted, including with respect to</div> <div>2 certain material in Dr. Noll's testimony.</div> <div>3 I raise this only because now that</div> <div>4 we've submitted amended testimony, the page numbers</div> <div>5 have changed, and so the material that was</div> <div>6 restricted is still in there, but it's on different</div> <div>7 page numbers than we initially indicated.</div> <div>8 So just for the record, if I could, I</div> <div>9 wanted to indicate what the new page numbers are.</div> <div>10 CHIEF JUDGE BARNETT: That would be</div> <div>11 great.</div> <div>12 MR. LARSON: So rather than Page 32,</div> <div>13 that material is now on 34. Rather than 41 and 42,</div> <div>14 the material is now on 44 and 45. And rather than</div> <div>15 on Page 46, the material is now on Page 48.</div> <div>16 And then with respect to Table 1,</div> <div>17 Table 3, Table 4 and Appendices C and D, those</div> <div>18 pages haven't changed, but the material is the same</div> <div>19 as to which the motion was initially granted.</div> <div>20 CHIEF JUDGE BARNETT: Thank you.</div> <div>21 MR. LARSON: Thank you.</div> <div>22 CHIEF JUDGE BARNETT: Mr. Handzo.</div>
305	307
<div>1 PROCEEDINGS</div> <div>2 WHEREUPON,</div> <div>3 ROGER G. NOLL</div> <div>4 previously called as a witness, and having been first</div> <div>5 previously duly sworn, was examined and testified</div> <div>6 further as follows:</div> <div>7 CHIEF JUDGE BARNETT: Good morning.</div> <div>8 Please be seated.</div> <div>9 Counsel, we understand there is some</div> <div>10 technology issue here at the counsel -- at the</div> <div>11 lecturn. But we also understand that can wait</div> <div>12 until the next witness, so we're going to go right</div> <div>13 ahead.</div> <div>14 MR. LARSON: Thank you.</div> <div>15 Good morning, Your Honors. I'm</div> <div>16 Todd Larson from SiriusXM. I just had one</div> <div>17 housekeeping matter with respect to Dr. Noll's</div> <div>18 testimony before Mr. Handzo steps up, if I could.</div> <div>19 CHIEF JUDGE BARNETT: Thank you.</div> <div>20 MR. LARSON: When we submitted our</div> <div>21 original case, we filed a motion to restrict</div> <div>22 certain material under the protective order. That</div>	<div>1 MR. HANDZO: Thank you.</div> <div>2</div> <div>3 CROSS-EXAMINATION</div> <div>4</div> <div>5 BY MR. HANDZO:</div> <div>6 Q. Good morning, Dr. Noll.</div> <div>7 A. Good morning.</div> <div>8 Q. Dr. Noll, it's your opinion that a</div> <div>9 willing buyer and a willing seller would agree to</div> <div>10 license sound recordings for use by SiriusXM at a</div> <div>11 rate of 6 to 7 percent of revenues; is that right?</div> <div>12 A. That's correct.</div> <div>13 Q. And you base that opinion primarily on</div> <div>14 the direct licenses that SiriusXM has negotiated</div> <div>15 with certain independent labels?</div> <div>16 A. That's correct.</div> <div>17 Q. And, to date, something more than 60</div> <div>18 indie labels have accepted that SiriusXM direct</div> <div>19 license offer, right?</div> <div>20 A. I believe the current number is around</div> <div>21 80.</div> <div>22 Q. The percentage of transmissions on</div>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

308	<p>1 SiriusXM represented by those licensors is about 2 2 percent, plus or minus, right? 3 A. Not any longer. It's gone from 4 2 percent to over 4 percent; it's more than 5 doubled. 6 MR. HANDZO: I should probably stop 7 here and raise an issue with the Court. And this 8 sort of relates to the issue of updating testimony. 9 Dr. Noll, in these answers, has 10 essentially given me numbers higher than what's in 11 his written testimony. And I guess the issue in my 12 mind is two-fold: Number 1, we do need to confront 13 the issue of to what extent can a witness update 14 testimony. 15 I think it then also raises the issue 16 of to what extent can a witness update testimony 17 where the information being updated has not been 18 disclosed to opposing counsel. 19 Because, you know, I know from 20 discovery that there are a few more indie labels 21 than the original that are in the amended 22 testimony. His last answer of the percentage that</p>	310	<p>1 labels declined as signed, correct? 2 A. I don't know the proportion by memory. 3 I think it's roughly 5 -- 5 -- 4 -- 4 or 5 to 1, 4 something like that, but I don't remember the 5 numbers exactly. 6 Q. Okay. But you know it's a lot more who 7 said no than who said yes? 8 A. Yes, it's many more said no than yes, 9 yes. 10 Q. And the major -- the major labels were 11 not offered this deal at all, right? 12 A. My understanding from reading the 13 testimony of others is that that's an incorrect 14 characterization, but I'm not the right person to 15 ask that question, because the two parties disagree 16 about what conversations took place between the 17 majors and -- and SiriusXM, and I'm not the one to 18 revolve that issue. 19 Q. In any event, we can agree that none of 20 the majors signed on to these direct licenses? 21 A. Yes. 22 Well, I think we can go beyond that.</p>
309	<p>1 he gave is something that was not correct at the 2 time that I took his deposition. And this is 3 information that's not been disclosed. 4 So I think there is an issue, at least 5 with updating information, that's never been 6 disclosed to opposing counsel. 7 JUDGE ROBERTS: Mr. Handzo, in that 8 case, why don't you ask him to confine his answers 9 to the time of his testimony and avoid just giving 10 him the general question so that there's no 11 misunderstanding by the witness as to whether 12 you're asking for what it was today or what it was 13 at the time you took the deposition? 14 MR. HANDZO: That's fine. I will do 15 that. 16 BY MR. HANDZO: 17 Q. It is correct, is it not, Dr. Noll, 18 that a substantial majority of the indie labels who 19 were offered this direct license by SiriusXM turned 20 it down? 21 A. That's true. 22 Q. In fact, five or six as many indie</p>	311	<p>1 They didn't negotiate with the SiriusXM. They 2 didn't -- there was no negotiation, really, between 3 SiriusXM and the majors. 4 Q. The direct license deal that was 5 offered to these indies was for a rate less than 6 the current statutory rate, at least as of the time 7 of your deposition, correct? 8 A. Yes and no. I mean, at the time of the 9 first tranche, the November tranche, if you net out 10 the costs of SoundExchange, it was basically the 11 same. It's in this year that it's half a percent 12 less. 13 Q. And let me just, as we go forward, just 14 to make my questions less cumbersome, but to accept 15 Judge Roberts' suggestion, when I ask you what was 16 offered or what was done, I'm going to be talking 17 about the time period up until the point where I 18 took your deposition. 19 Is that fair? Or whether or not it's 20 fair, that's what I'm asking. 21 A. I think it's extremely misleading to 22 ask a question in the present tense when the answer</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

312	<p>1 has to be the past tense. That's why -- I don't 2 think I revealed any information anybody doesn't 3 know in that last answer. 4       So, no, I don't really -- first of all, 5 I don't know what you've seen and what you haven't. 6       Secondly, I do know that in my original 7 report, I talked about the 2012 rate, so that isn't 8 something that is not in my report. So I don't 9 think I revealed anything that was inconsistent, 10 but you did ask a question in the present tense. 11     Q. Right. 12       And just to be clear, when I'm asking 13 you about what was done or what wasn't done, I'm 14 asking you as of the time of your deposition, okay? 15     A. The 8 percent answer for 2012 was at 16 the time of my deposition. Because I did do a 17 forward-looking analysis of the licenses that had 18 been signed in 2011 in my original expert report 19 prior to the written testimony. 20     Q. Okay. Understood. And let me just go 21 back to that. 22       As I understood the last series of</p>	314	<p>1 the indies and the majors and the various trade 2 associations and SoundExchange. So I can't speak 3 to the motive of all the people who actually 4 engaged in negotiations but never reached an 5 agreement. 6       I don't know why they didn't sign the 7 agreement. Some obviously weren't interested in 8 signing it to begin with, but others talked about 9 being pressured by various trade associations not 10 to sign. 11     Q. You did not participate in any of these 12 negotiations, correct? 13     A. I did not participate in negotiations, 14 but I've read the discovery material about those 15 negotiations as that has been produced in the case. 16     Q. So other than what you've read in the 17 discovery materials, you have no direct knowledge 18 of what happened in the negotiations, correct? 19     A. That's correct. 20     Q. But you have hypothesized that at least 21 some significant number of record companies decided 22 not to negotiate a direct license because they</p>
313	<p>1 questions and answers, the direct license deal that 2 was offered to indies in the first round in 2011 3 actually wound up being at a rate about equivalent 4 to the then current statutory rate, correct? 5     A. In the year 2011, that is correct. In 6 the year 2012, it's half a percent lower. 7     Q. Right. And that's because the 8 statutory rate went up by half a percent between 9 2011 and 2012, correct? 10     A. That's correct. 11     Q. Now, it is your theory, is it not, that 12 only a small segment of the recording industry 13 agreed to accept these direct licenses because the 14 rest of the industry believed it would be better 15 off acting collectively through SoundExchange, 16 correct? 17     A. I don't agree with that 18 characterization. Whether they thought they would 19 be better off or worse off is one explanation. 20       Another explanation is the 21 information -- the -- the information exchanges, 22 both public and private, that took place between</p>	315	<p>1 believed they would be better off acting 2 collectively through SoundExchange, correct? 3     A. I believe that there were a lot of 4 labels that believe they'd be better off acting 5 collectively and, in particular, certainly the 6 majors believed that. 7     Q. Okay. 8       Now, the action that the record labels 9 can take acting through SoundExchange is just to 10 come to this Court and ask it to set a rate, right? 11     A. That's correct. 12     Q. So if the rate offered by SiriusXM was 13 indeed a market rate, and if the record companies 14 believed that this Court would set a rate equal to 15 the rate that would be set in a workably 16 competitive market, they would have had no 17 incentive to reject the direct licenses, right? 18     A. That's not true, because the issue 19 really is what is your expectation about the nature 20 of the rate that will be set in the Court. 21       It's not necessarily true that people 22 believe that the rate that is going to be set in</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

316	<p>1 the Court is exactly the rate that would be coming 2 forth in a market. This -- all the Court can do is 3 approximate that.</p> <p>4 If that's what they believe the Court's 5 job is here, it's just an approximation. And as we 6 know from the last time, there was this wide zone 7 of reasonableness, quote/unquote, that the Court 8 found. So it isn't a precise point estimate as to 9 what the Court is going to decide.</p> <p>10 Q. Nevertheless, there wouldn't be a lot 11 of reason to refuse to enter into a direct license 12 at a market rate if you thought this Court was 13 going to set a market rate, correct?</p> <p>14 A. Well, it depends on the circumstances 15 that if -- if SiriusXM offers you the opportunity 16 for more play time if you sign a license, that's a 17 reason to sign it.</p> <p>18 So remember that the time these things 19 are being signed is there's still uncertainty as to 20 what it's going to be, and if you can get the 21 certainty of what you believe is a reasonable rate, 22 plus the opportunity to get more plays, that's a</p>	318	<p>1 would do better acting collectively, they would get 2 a better rate from this Court, correct?</p> <p>3 A. That's certainly true, that there are 4 record companies that believe that, yes.</p> <p>5 Q. Okay. And --</p> <p>6 JUDGE ROBERTS: Professor Noll, in any 7 of the direct licensing agreements that you looked 8 at, did any of them contain a most favored nation 9 clause?</p> <p>10 THE WITNESS: I don't believe so, but 11 there are 80 of them, and I haven't -- I haven't 12 read every word of every one of them. But I don't 13 believe so.</p> <p>14 JUDGE ROBERTS: I understand.</p> <p>15 MR. RICH: I think when Mr. Gertz takes 16 the stand, he may be able to answer that question 17 directly, or possibly Mr. Frear.</p> <p>18 JUDGE ROBERTS: Thank you.</p> <p>19 BY MR. HANDZO:</p> <p>20 Q. It is your opinion, is it not, that you 21 think some of the record companies believed they 22 would do better in this Court because you believe</p>
317	<p>1 powerful incentive.</p> <p>2 That's exactly the competitive process 3 at work, is to take advantage of the circumstance, 4 to lock up a rate you regard as reasonable and, in 5 return, get the prospect of more plays.</p> <p>6 Q. That's why some of the indies might 7 have signed under your theory, but your theory with 8 the ones who didn't sign --</p> <p>9 A. But the same --</p> <p>10 Q. -- is they thought they would do better 11 in this Court, correct?</p> <p>12 A. -- that's true -- the theory of -- the 13 explanation, if you will, it's not just a theory, 14 because we observe it happening, it's an 15 empirically tested proposition -- the incentives 16 are the same for everybody, including the majors.</p> <p>17 The issue is whether they respond to 18 those incentives or whether they believe that 19 acting jointly and not competing is going to get 20 them a better result.</p> <p>21 Q. And your belief is that many of the 22 record companies thought they would act -- they</p>	319	<p>1 the procedures in this Court are stacked in favor 2 of the record companies, right?</p> <p>3 A. The way I would put it is the 4 information from SoundExchange is designed to be 5 information that's favorable to the collective of 6 labels that are being represented here, and the 7 optimal rate to be proposed by SoundExchange is not 8 one that reflects competition among the labels that 9 it's representing.</p> <p>10 And so it will present information that 11 is supportive of what would be the cartelized rate, 12 the rate that would be decided by the group acting 13 as a whole if it were a merged entity. That's the 14 information that SoundExchange presents.</p> <p>15 In addition to that, the labels and 16 SoundExchange have more information about what's 17 going on in the digital delivery marketplace, 18 because they're the ones signing the agreement, not 19 SiriusXM. So SoundExchange has an informational 20 advantage over SiriusXM in the proceeding.</p> <p>21 Those two phenomena, to the extent that 22 information affects outcomes, bias the outcome of</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

320	<p>1 the process in favor of SoundExchange. 2 That's -- that is the basic explanation 3 of what's going on, that -- that to withstand 4 appeals, regulatory bodies like this one have to 5 base their decisions in the evidence before them, 6 and if the evidence itself is not complete and 7 comprehensive, then that produces results that are 8 favorable to the party that has the most 9 information. 10 Q. And so to be clear, you believe that 11 the procedures in this Court stack the deck in 12 favor of SoundExchange, correct? 13 A. The deck stacking is a terminology for 14 the paper that I wrote in 1987, and it refers to 15 the way Congress writes administrative procedures. 16 Q. Okay. That wasn't exactly my question. 17 My question is, that you believe the 18 procedures in this Court stack the deck in favor of 19 SoundExchange, right? 20 A. And I'm explaining that that deck 21 stacking argument is about the procedures in 22 legislation written by Congress, and some of the</p>	322	<p>1 understanding that last answer, you believe that 2 the procedures in this Court do stack the deck in 3 favor of SoundExchange, but you think there's even 4 more to it than that? 5 A. Yes. The way administrative procedures 6 affect outcomes has a lot more to it than deck 7 stacking. 8 Q. All right. And you believe that this 9 whole process lacks a certain legitimacy, correct? 10 A. Lacks what? 11 Q. A certain legitimacy? 12 A. No, I don't -- I don't think I've ever 13 said that. The legitimacy usually refers to the ' 14 process, and I don't recall having said that. 15 MR. HANDZO: I'm going to mark as 16 SoundExchange Trial Exhibit I Dr. Noll's 17 deposition. 18 (SoundExchange Trial Exhibit Number 1 19 was marked for identification 20 purposes.) 21 BY MR. HANDZO: 22 Q. Dr. Noll, I'm showing you what we</p>
321	<p>1 procedures are written by Congress, some of them 2 are not. Some of them are -- are determined by the 3 canons of administrative law. 4 So, you know, you -- you -- the results 5 are biased, but deck stacking refers to a very 6 specific -- there's a series of administrative 7 biases in the design of information-gathering 8 processes, of which deck stacking is one, and that 9 refers to administrative procedures that are 10 embedded into legislation by Congress. 11 Q. All right. Do you or do you not 12 believe that the procedures in this Court stack the 13 deck in SoundExchange's favor? 14 A. I believe they make the result biased 15 in favor of SoundExchange for the reasons I gave; 16 that the -- the -- some of these procedures are in 17 the statute, but I don't think most of them are. I 18 think most of them are not in the statute. 19 So there is a deck stacking feature 20 here, yes, but it's not all there is. It's -- 21 that's way too limited a concept to apply here. 22 Q. Okay. Well, if I'm correctly</p>	323	<p>1 marked as SoundExchange Trial Exhibit I, and I'd 2 ask you to turn to Page 105 of that. 3 And I should ask you, first of all, do 4 you recognize this as a transcript of your 5 deposition? 6 A. Yes, this is talking about 7 administrative processes, yes. 8 Q. First of all, this is your deposition 9 transcript, correct? 10 A. Yes. 11 Q. And on Page 105, did you not say, 12 quote, I think that is by far the most important 13 feature of this process and why this process, in my 14 mind, lacks a certain legitimacy, unquote? 15 A. Yeah. 16 And notice on Page 103, I said it's not 17 the judges, it's not the Copyright Royalty Judges 18 per se; it's the process. And I want to make that 19 distinction. This was about the nature of the 20 relationship between information controls through 21 procedures and outcomes in general, and it's not 22 about the Judges per se.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

324	<p>1 Q. Okay.</p> <p>2 CHIEF JUDGE BARNETT: Let me just make</p> <p>3 sure the record is clear.</p> <p>4 This is deposition taken Thursday,</p> <p>5 March 8th of this year, correct?</p> <p>6 MR. HANDZO: That is correct. Yes.</p> <p>7 CHIEF JUDGE BARNETT: Thank you.</p> <p>8 BY MR. HANDZO:</p> <p>9 Q. So getting back to what we were talking</p> <p>10 about before, it is your opinion, is it not, that</p> <p>11 some number of record companies declined to</p> <p>12 negotiate direct licenses because they thought they</p> <p>13 would do better in this Court, because the</p> <p>14 procedures in this Court, in your opinion, stack</p> <p>15 the deck in SoundExchange's favor and lack a</p> <p>16 certain legitimacy?</p> <p>17 A. The procedures themselves -- the</p> <p>18 administrative process itself has a certain feature</p> <p>19 of lacking legitimacy that is outside the control</p> <p>20 of the Copyright Royalty Judges.</p> <p>21 Q. Okay. So the answer to my question was</p> <p>22 yes?</p>	326	<p>1 people whose -- whose decisions they affect --</p> <p>2 Q. Okay.</p> <p>3 A. -- and that leads to evaluations of</p> <p>4 them in the outside world that are biased, because</p> <p>5 the only people reviewing them are the people who</p> <p>6 are directly affected, as opposed to the general</p> <p>7 public and their -- their -- so they don't get</p> <p>8 direct feedback from consumers, they only get</p> <p>9 feedback from artists and record labels and</p> <p>10 SiriusXM.</p> <p>11 Q. Okay. Dr. Noll, it will surprise you</p> <p>12 to learn that I have not read all of your papers.</p> <p>13 So I'm not going to cross-examine you about that</p> <p>14 one.</p> <p>15 But my point was simply this: When you</p> <p>16 talk about the political and informational</p> <p>17 advantages that you claim SoundExchange has,</p> <p>18 doesn't it really sort of all boil down to, you</p> <p>19 think, the procedures that govern how these cases</p> <p>20 proceed?</p> <p>21 A. No, it's not just the procedures.</p> <p>22 That's why I answered the last question the way I</p>
325	<p>1 A. (No audible response.)</p> <p>2 Q. Now, as I understand it, your view</p> <p>3 that -- well, let me back up.</p> <p>4 You have suggested, I believe, in your</p> <p>5 written testimony that SoundExchange and the record</p> <p>6 companies have political and informational</p> <p>7 advantages in this Court, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And when you say "political," you're</p> <p>10 not suggesting that the Judges are somehow biased?</p> <p>11 A. No, it's not. Again, that's not what</p> <p>12 we're talking about.</p> <p>13 Q. When you're referring to the political</p> <p>14 advantages, you're really talking about the</p> <p>15 procedures that have evolved in this Court,</p> <p>16 correct, or that were set by Congress?</p> <p>17 A. Partly that.</p> <p>18 There's -- there's another aspect to it</p> <p>19 as well, which is -- refers to another paper that I</p> <p>20 wrote, which is called the -- the incentive</p> <p>21 structure created for regulators owing to their</p> <p>22 general invisibility except with respect to the</p>	327	<p>1 did. There's one part that's about procedures and</p> <p>2 there's another part about feedback. And the</p> <p>3 political aspect of it pertains to the feedback</p> <p>4 effect as well as the procedural effect.</p> <p>5 Q. With respect to the informational</p> <p>6 advantage that you claim the record companies have,</p> <p>7 it is correct, is it not, that both sides in these</p> <p>8 cases are allowed to take discovery, right?</p> <p>9 A. Well, yes, of course.</p> <p>10 Q. And the discovery rules apply equally</p> <p>11 to both sides, right?</p> <p>12 A. I am not an expert on the discovery</p> <p>13 rules here. I don't know what's allowed and what</p> <p>14 isn't in this procedure.</p> <p>15 Q. You know that SiriusXM was allowed to</p> <p>16 serve requests for production of documents,</p> <p>17 correct?</p> <p>18 A. Yes, of course.</p> <p>19 Q. And did you have any input into those</p> <p>20 requests? Did you ask for specific information?</p> <p>21 A. Yes, I did ask for specific</p> <p>22 information.</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">328</p> <p>1 Q. And, to your knowledge, did SiriusXM's 2 counsel include those requests in -- in the 3 discovery that they served? 4 A. I don't recall having read in real time 5 what their discovery requests were, but we did have 6 discussions about what we were going to try to 7 discover and what information I thought was 8 relevant. 9 Q. And one of the things that you wanted 10 was, were digital deals negotiated by the major 11 record companies, correct? 12 A. That's correct. Any kind of digital 13 rights. 14 Q. So you had the ability to ask for 15 those, right? 16 A. Well, I had -- of course, and I did ask 17 for them. 18 Q. And, to your knowledge, counsel then 19 asked for them, correct? 20 A. To my knowledge. I don't recall the 21 wording specifically of whatever requests they had. 22 It is my understanding they did.</p>	<p style="text-align: right;">330</p> <p>1 what I was told. So I wasn't able to use those. 2 Q. But you were able to get discovery on 3 what you needed, right? 4 A. I don't know if I have complete 5 discovery. I certainly have a lot of agreements. 6 Whether -- whether they're all that exist -- 7 whether the discovery was complete, I have no way 8 of knowing that. 9 Q. Okay. You do know you got an awful 10 lot, over 2,000? 11 A. Yes. 12 Q. And you were able to amend your 13 testimony using them, right? 14 A. I did amend my testimony. In fact, 15 most of the discussion in my testimony about deals 16 is based on discovery. It's not based on what was 17 in the public record at the time I wrote my 18 original draft. 19 Q. Okay. And you understand that you will 20 have another opportunity, if you choose to avail 21 yourself of it, to file rebuttal testimony and get 22 discovery in that phase of the case as well, right?</p>
<p style="text-align: right;">329</p> <p>1 Q. Okay. And, in fact, you received over 2 2,800 digital deals from the record companies? 3 A. A very large number, yes. 4 Q. And you had the opportunity to review 5 them? 6 A. I did have the opportunity to review 7 them. 8 Q. And you had the opportunity to file 9 amended written testimony based on that discovery, 10 correct? 11 A. That's correct. 12 Q. So the procedures in this Court 13 afforded SiriusXM the opportunity to obtain 14 information that was in SoundExchange's possession 15 and the possession of the record companies, 16 correct? 17 A. Well, yes and no. There were -- there 18 are some deals that -- that I was told, at least, I 19 couldn't use because of the rules regarding whether 20 they could be used in these proceedings; that some 21 of the deals that have been made are precluded from 22 being used in this proceeding. At least that's</p>	<p style="text-align: right;">331</p> <p>1 A. Yes and no. 2 I'm still not clear on exactly what I'm 3 allowed to talk about in rebuttal. So I have to 4 have more information about that. I think there 5 are some constraints on what I'm allowed to say in 6 rebuttal. 7 Q. I won't ask you what you've been 8 asked to do in the rebuttal case, tempting though 9 that might be. 10 As I listen to your answers, Dr. Noll, 11 you've said that these supposed informational 12 advantages are two things: SoundExchange has access 13 to more information, and certain deals under 14 congressional legislation are deemed 15 nonprecedential; is that right? 16 A. Well, it's -- the nonprecedential part 17 is more than that. There are some deals that could 18 be precedential if -- but it requires the -- the 19 consent of both parties to the deal. 20 So there's a veto power that the 21 parties to an agreement have over whether a deal 22 could be introduced in this proceeding.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">332</p> <p>1 Q. But I have correctly identified the two 2 things that you say create informational 3 advantages, right? 4 A. Those are the two informational 5 advantages. 6 Q. And as to the information that 7 SoundExchange or the record companies might have, 8 you agree that there are discovery processes for 9 SiriusXM to learn that information, correct? 10 A. There are discovery processes to learn 11 some of that information, yes, but not all of it. 12 Q. And you have had the ability to avail 13 yourself of those processes and amend your 14 testimony with it, right? 15 A. Yes, I have, although, as you know, 16 some of my amended testimony wasn't legitimate, 17 according to the procedural rules, and that, you 18 know, turned an illustration of my point. 19 Q. Now, I want to talk to you about why 20 the indie labels that accepted these direct 21 licenses might have done so. 22 The direct licenses do not represent</p>	<p style="text-align: right;">334</p> <p>1 important component of it; namely, the kinds of 2 things that are done in Webcaster -- Webcaster is 3 actually more important than this proceeding. 4 That's the most important proceeding. 5 Q. But you would agree that the 6 negotiation of direct licenses for -- with 7 SiriusXM, those negotiations are very directly 8 impacted by the regulatory process? 9 A. That's exactly what I said, that this 10 one is the closest, yes. 11 Q. Okay. For one thing, the licensors 12 have no ability to refuse to enter into a license, 13 correct? 14 A. That's true, but they can refuse to 15 enter into a license with SiriusXM as an -- as a 16 direct license. They have a choice between this 17 proceeding and a direct negotiation. 18 Q. Right. But they don't have a choice to 19 just to not provide their content to SiriusXM? 20 A. That's correct. 21 Q. So the expectations of the parties, 22 both SiriusXM and the indies, about the possible</p>
<p style="text-align: right;">333</p> <p>1 transactions that were negotiated in an unregulated 2 market, right? 3 A. The parties to those transactions 4 were -- had -- both sides had the opportunity to 5 have the rate that was determined in those 6 negotiations instead be determined in this process. 7 Q. So it is fair to say, is it not, that 8 the negotiation of sound recording rights for use 9 by SiriusXM is a transaction that is directly 10 impacted by the regulatory scheme? 11 A. I believe all the licenses for digital 12 distribution of music are impacted by the 13 regulatory regime. So this one is extremely close, 14 because some of them, the impact is that there's a 15 statutory rate for something that's sort of like 16 what you have but it's not exactly the same, 17 because it puts you in a different category, but 18 those are still affected. 19 So we don't have -- we don't have a 20 pure market rate anywhere, because the whole 21 structure of prices for digital music is affected 22 by the existence of the regulatory process for an</p>	<p style="text-align: right;">335</p> <p>1 outcome of the regulatory process affects the rate 2 they would be willing to agree to; is that right? 3 A. It's symmetric. SiriusXM doesn't have 4 any alternative. It can either go out of business 5 or accept the outcome of this proceeding. So 6 they're in the same position. It's symmetric. 7 Both sides are bound by the outcome of this 8 proceeding, bound by the statutory rate, and 9 their -- and their choice -- both have the same 10 choice. They either go out of business or deal 11 with the other entity according to the terms of the 12 statutory rate. 13 Q. Well, I don't think that was the 14 question I asked. 15 So let me try again. 16 You would agree with me, would you not, 17 that the expectations of the parties about the 18 outcome of the regulatory process would affect the 19 rate that they're willing to agree to in direct 20 negotiations? 21 A. I've already agreed to that, yes. All 22 the rates -- all the negotiated rates we deal with</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

336	<p>1 here are -- are affected by the presence of the 2 regulatory process. 3 Q. Right. 4 So the direct license rates may simply 5 represent a prediction about what this Court would 6 do in the regulatory process, right? 7 A. Well, yes and no, because it's -- 8 remember, there's uncertainty. It's -- you're not 9 only comparing a point estimate of what the outcome 10 of the regulatory process is with the known and 11 certain rate you're going to get in a license, but 12 the other part of the regulatory process is that 13 it's -- in a -- in a before-the-fact sense, it's 14 uncertain, it's risky, and you can have good 15 outcomes and bad outcomes. 16 So one of the things you're buying when 17 you sign a direct license, whether you're the buyer 18 or the seller, is you're -- you're transferring an 19 uncertain outcome to a certain outcome, and that's 20 valuable. 21 Q. But at the end of the day, what you're 22 doing when you're negotiating is trying to make</p>	338	<p>1 something like that. So, of course, the chances 2 that any of them have a witness here is zero. 3 Q. And you understand, of course, that 4 SiriusXM, SiriusXM's counsel and SiriusXM 5 executives have been very much a part of, 6 obviously, this proceeding, but the SDARS I 7 proceeding as well? 8 A. Yes, of course. 9 Q. In the discovery materials that you've 10 reviewed, you have seen, have you not, that during 11 the negotiations for these direct licenses, 12 SiriusXM represented to the indies that if the 13 statutory rate went up at all as a result of these 14 proceedings, it would go up only by a very small 15 amount, right? 16 A. I do not -- what I have seen about the 17 negotiations, of course, is secondhand. 18 That's not an accurate characterization 19 of what I've seen, but that doesn't mean it didn't 20 happen. I don't think I, again, am the right 21 person to ask of what MRI people said to 22 independent labels. I've seen characterizations of</p>
337	<p>1 some prediction about what the Court will do, 2 right? 3 A. You are trying to make a prediction, 4 but the prediction is not a point estimate; the 5 prediction is a range of possible outcomes, and 6 some of which are good and some of which are bad. 7 Q. Okay. 8 Now, with respect to predicting what 9 rate might emerge from proceedings before this 10 Court, none of the indies who signed a direct 11 license has ever directly participated in 12 proceedings before this Court, is that correct, to 13 your knowledge? 14 A. To my understanding, nobody except 15 SoundExchange participates for the labels. That's 16 true of Universal as well as an independent label. 17 Q. To your knowledge, none of those indies 18 have ever had a witness in these proceedings or had 19 counsel attend these proceedings? 20 A. I have no idea -- I doubt that they do. 21 because to my knowledge, there's only been one 22 indie witness ever in history, or maybe two,</p>	339	<p>1 it in testimony by others, but I have no firsthand 2 knowledge -- 3 Q. Okay. 4 A. -- I believe it's the case that they 5 did say that, give reasons why you might want to 6 sign at their rate rather than 8 percent. I don't 7 know that there was -- I don't know the character 8 of the actual communications that took place 9 between either MRI or SXM and an independent label 10 about expectations in the future. 11 Q. Okay. Let's just say hypothetically 12 that SiriusXM or MRI doing the negotiating made the 13 representations that I just indicated; that is, if 14 the rate goes up at all in this proceeding, it's 15 only going to be by half a percent or so. 16 If that were the case, it's possible 17 that the indies that signed these deals simply 18 accepted SiriusXM's representations about what the 19 rate would be, correct? 20 A. In order for that to be true, you would 21 have to make the claim that an independent label 22 would listen to the person that's negotiating with</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">340</p> <p>1 them for a price who has their own agenda, rather 2 than their own trade association about what the 3 likely outcome was going to be. 4       It's not that there was an 5 information-impacted environment here. There were 6 lots of people telling them what they thought the 7 outcome of this process would be. 8       And so in principle, somebody could 9 have been silly enough that they ignored what all 10 the trade associations in their own industry were 11 telling them and listened to the person they were 12 trying to sell it. But it doesn't seem plausible 13 to me. That's not how businesses survive, 14 listening to the -- the -- their customers' 15 predictions about the future as opposed to their 16 trade associations' predictions of the future. 17       Q. And I take it from what you just said 18 that if trade associations were publicly stating 19 that they thought the outcome of this proceeding 20 would be a rate considerably higher than the 21 existing rate, you don't have a problem with them 22 making those public statements, do you?</p>	<p style="text-align: right;">342</p> <p>1 record labels only get 50 percent of the royalty, 2 right? 3       A. That's correct. 4       Q. Record labels frequently pay advances 5 to their artists, right? 6       A. That's correct. 7       Q. And when they do, you understand that 8 they generally have the contractual right to recoup 9 those advances from royalties owed to the artist, 10 right? 11       A. The contract -- the contract normally 12 specifies the nature of the payments to the 13 artists, and it usually does involve an advance on 14 future royalties. 15       It'll specify a fraction of the 16 revenues from the sound recording that are to be 17 given to the artist, and then the first X dollars 18 of that are credits against the advance, or some 19 fraction of the first X dollars are credits against 20 the advance. 21       Q. Okay. I think we're saying the same 22 thing, but let me just be clear.</p>
<p style="text-align: right;">341</p> <p>1       A. The issue I have a problem with isn't 2 that one, no. 3       It's obviously going to be the case 4 that there's going to be lots of expressions of -- 5 that are more closer to marketing rather than being 6 predictions by everybody involved, and most 7 rational businessmen would ignore marketing like 8 that without trying to get some independent 9 information. 10       Q. Now, it is a feature of the direct 11 licenses, isn't it, that SiriusXM is going to pay 12 100 percent of the royalty to the record label? 13       A. It is the case that the -- that the 14 licenses call for SiriusXM to pay the -- the labels 15 directly, and then the labels' responsibility is to 16 divide it between the label and the artist. 17       Q. Okay. And you understand under the 18 statutory scheme, SoundExchange has to pay 19 50 percent to the record label and 50 percent to 20 the artists, correct? 21       A. To the degree they can find them, yes. 22       Q. And so under the statutory scheme, the</p>	<p style="text-align: right;">343</p> <p>1       A. I wanted to be sure it was clear, 2 that's all. 3       Q. Sure. 4       It is common in the recording industry 5 that record companies will pay an advance to an 6 artist, and then when the royalties are paid to the 7 record company, it is allowed to take the artist's 8 share and essentially recoup that from the advance, 9 right? 10       A. Yeah, that's -- that's -- that is -- 11 that is the standard practice, especially among the 12 majors. A lot of the indies are actually owned by 13 the artists. 14       So that -- that isn't -- that isn't an 15 apt characterization of the label that was owned by 16 George Carlin, for example, or the label that's 17 owned by -- owned by Lady Antebellum. 18       I mean, if the artist owns the label. 19 then that's not a -- that's a distinction without 20 meaning. 21       Q. Okay. It is a -- it is common, though, 22 for -- for labels that are not artist owned, right?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

344	<p>1 A. It is a common practice, although it's 2 not uniform. 3 Q. Okay. 4 Now, by paying 100 percent of the 5 royalties to the record company instead of the 6 record company getting just 50 percent, a record 7 company can recoup against its advances faster than 8 it otherwise would? 9 A. I'm sorry, I didn't hear you. 10 Q. Sure. 11 In a -- an agreement where 100 percent 12 of the royalties are paid to the record company, as 13 opposed to it getting 50 percent and the artist 14 getting 50 percent, the record company can recoup 15 against its advances faster than it otherwise 16 would, correct? 17 A. Yes and no. It depends on the -- on 18 what the -- what's happening with respect to the 19 transaction after it gets out of SoundExchange. 20 But in principle, that could happen. 21 Q. Okay. And, in fact, there are times 22 when record companies pay advances and they</p>	346	<p>1 fee to the performers for work for hire, right? 2 A. That's correct, yes. 3 Q. In that situation, the record company 4 does not owe any royalties to the artist, correct? 5 A. That's correct. And that -- in that -- 6 and -- in that case, the record company will just 7 keep whatever it receives, and that creates the -- 8 that creates the incentive for record companies to 9 produce more recordings that are based on work for 10 hire, because it can just pay people a wage and 11 produce records and get all the return from it. 12 And it increases the number of sound recordings. 13 Q. In that situation that we've just 14 discussed, it's obviously to the advantage of the 15 record company, wouldn't you agree, to get 16 100 percent of the royalties rather than 50? 17 A. Well, to -- that specific example is to 18 the advantage of record companies, artists and 19 consumers, because it produces more sound 20 recordings and then pull more employment for 21 artists. 22 Q. Well, let's talk about the record</p>
345	<p>1 actually never get enough royalties to recoup those 2 advances in full, right? 3 A. That does happen, yes. It has 4 happened. 5 Q. So in a situation where the record 6 company is getting 100 percent of the royalties, as 7 opposed to 50 percent under the statutory scheme, 8 its chances of fully recouping its advances are 9 improved, right? 10 A. That's exactly right. 11 Q. Now, there may be some record labels 12 that actually don't have a contractual obligation 13 to share royalties with their artists, correct? 14 A. That's true. There's -- there's -- 15 that's why I was demurring about your 16 characterization, is that -- whereas what you said 17 was common, it's not universal, and some -- some 18 records are just made by studio musicians being 19 paid as work for hire, and the label just owns the 20 sound recording. 21 Q. So in that situation, the work-for-hire 22 situation, the record company is just paying a flat</p>	347	<p>1 company. It is to the record company's advantage, 2 where it doesn't owe a royalty to the -- to the 3 artist, to get 100 percent of the royalty rather 4 than 50 percent from SoundExchange, right? 5 A. Yes. And that -- the fact that that's 6 more attractive means they produce more recordings. 7 Q. But for a record company that doesn't 8 owe a royalty to its artists because it's got -- 9 it's doing works for hire, for example, a 7 percent 10 rate from SiriusXM is really equivalent to a 11 14 percent statutory rate for that -- for that 12 label, right? 13 A. That would be the case, that's right. 14 That's an incentive for them to sign this, exactly. 15 Q. And it is true, is it not, that during 16 the negotiations, MRI used as a selling point the 17 fact that SiriusXM would pay 100 percent of the 18 royalties to the record labels who signed? 19 A. Well, it was a characteristic that they 20 advertised. Whether it's a selling point, you're 21 again asking me to reach a conclusion that I don't 22 know. But certainly it is the case that that was</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

348	<p>1 well known, and part of the process -- that was</p> <p>2 part of the negotiation, yes.</p> <p>3 Q. That was a feature of these direct</p> <p>4 licenses that -- that you know MRI emphasized to</p> <p>5 these record labels, correct?</p> <p>6 A. Well, to anybody. I mean, the majors</p> <p>7 could have signed the same deal, and they have</p> <p>8 works for hire as well.</p> <p>9 So this incentive is operating for</p> <p>10 everybody. It doesn't distinguish those who sign</p> <p>11 the license from those who don't.</p> <p>12 Q. It is true, is it not, that some of the</p> <p>13 labels who signed these direct deals might have</p> <p>14 been motivated in whole or in part by the fact that</p> <p>15 SiriusXM agreed to pay them advances?</p> <p>16 A. Of course. That's -- that's -- that is</p> <p>17 a mechanism for creating an incentive on the part</p> <p>18 of Sirius and XM to come through with the promise</p> <p>19 about plays. If you take an advance, there's an</p> <p>20 implicit number of plays that would recoup that</p> <p>21 advance, and then SiriusXM basically gets to play</p> <p>22 you for free until it gets -- until it pays off the</p>	350	<p>1 licenses are representative of the much larger</p> <p>2 group of labels who did not sign direct licenses?</p> <p>3 A. You -- you petered off at the end, I'm</p> <p>4 sorry.</p> <p>5 Q. I'm sorry.</p> <p>6 JUDGE ROBERTS: Mr. Handzo, why don't</p> <p>7 you pull your microphone in a little bit closer?</p> <p>8 BY MR. HANDZO:</p> <p>9 Q. It is your opinion, is it not, that the</p> <p>10 record labels who agreed to sign direct licenses</p> <p>11 are representative of the larger group of record</p> <p>12 labels who did not sign direct licenses?</p> <p>13 A. Yeah. I put it a somewhat different</p> <p>14 way, that collectively, they represent a -- a</p> <p>15 library of sound recordings that is representative</p> <p>16 of the libraries of sound recordings of -- of other</p> <p>17 independents and the major distribution companies.</p> <p>18 Q. Okay. And as I understand it, it's</p> <p>19 fairly central to your opinions in this case that</p> <p>20 the labels that signed are -- are represented --</p> <p>21 representative, at least as a collectivity, of all</p> <p>22 of the record labels, correct?</p>
349	<p>1 advance.</p> <p>2 Q. And there is an advantage to the record</p> <p>3 label in getting an advance, because there's a time</p> <p>4 value to money, right?</p> <p>5 A. And that's true for every single label,</p> <p>6 not just those who signed.</p> <p>7 Q. Okay. And so the ability to get an</p> <p>8 advance might also be a reason why record labels</p> <p>9 sign these direct deals, right?</p> <p>10 A. It could be, yes. And I think -- and I</p> <p>11 think it -- I think the explanation for it is less</p> <p>12 the time value of money explanation and more the</p> <p>13 guarantee about play time. I think that was --</p> <p>14 that -- that really is an important factor in why a</p> <p>15 record label would want to sign one of these.</p> <p>16 Q. But you would agree that there is a</p> <p>17 time value of money benefit to getting an advance.</p> <p>18 right?</p> <p>19 A. Yes, but in the current environment.</p> <p>20 it's not very high.</p> <p>21 Q. Now, it's your opinion, is it not,</p> <p>22 Dr. Noll, that the labels who agreed to sign direct</p>	351	<p>1 A. Well, you're putting it dichotomously,</p> <p>2 and obviously, it's not going to be a perfect</p> <p>3 match, but the -- but the -- but it's sort of a</p> <p>4 more or less thing.</p> <p>5 But what I have concluded is that</p> <p>6 they -- the eyes of collectivity represent the</p> <p>7 distribution across the genres and the -- and the</p> <p>8 categories between hits, other current releases</p> <p>9 and -- and catalog that record companies in general</p> <p>10 offer.</p> <p>11 So you get this kind of mix. They'll</p> <p>12 be specific recordings that fall into this category</p> <p>13 that if you're running a particular channel in a</p> <p>14 particular genre, you really have to have access to</p> <p>15 that song. Most of the other stuff is</p> <p>16 substitutable with other things for -- for</p> <p>17 everybody.</p> <p>18 And -- so they sort of look like that.</p> <p>19 They -- they have things that are highly</p> <p>20 attractive, things that are nice to have but are</p> <p>21 not completely essential, and then things that can</p> <p>22 be easily substituted for others.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

352	<p>1 Q. Let me -- let me state it in the</p> <p>2 negative.</p> <p>3 You would agree, would you not, if the</p> <p>4 record labels that signed are not representative of</p> <p>5 the larger use -- larger universe of record labels,</p> <p>6 this wouldn't be a very good benchmark, right?</p> <p>7 A. Okay, you'll have to explain to me</p> <p>8 precisely what you mean by "not representative."</p> <p>9 Q. You have looked at representativeness</p> <p>10 in two ways, if I understand it. The first way is</p> <p>11 to look at whether these labels that signed as a</p> <p>12 group have all of the different kind of genres that</p> <p>13 you would expect to see for the music industry as a</p> <p>14 whole; is that right?</p> <p>15 A. That's part of it, yes.</p> <p>16 Q. Okay.</p> <p>17 A. Part of it is genre; part of it is time</p> <p>18 distribution; and part of it is does it have</p> <p>19 hits --</p> <p>20 Q. And part --</p> <p>21 A. -- and leading artists, sort of iconic</p> <p>22 artists.</p>	354	<p>1 representative, you would agree that those direct</p> <p>2 licenses do not represent a very good benchmark,</p> <p>3 correct?</p> <p>4 A. Well, the -- the degree to which</p> <p>5 they're a good benchmark depends on how close they</p> <p>6 come to a distribution of sound recordings that you</p> <p>7 could rely upon for all of the various uses you</p> <p>8 have for sound recordings on a radio station, and</p> <p>9 the further it goes away from that, the less</p> <p>10 representative it would be, so -- and the less good</p> <p>11 these licenses would be. It's a continuous</p> <p>12 phenomenon, not a --</p> <p>13 Q. What I hear you saying is it's not a</p> <p>14 either/or; there's a continuum?</p> <p>15 A. Right.</p> <p>16 Q. But the less representative they are,</p> <p>17 the less good a benchmark this would be, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And, again, one of the ways</p> <p>20 you're looking at representativeness is the</p> <p>21 so-called quality of the sound recordings, right?</p> <p>22 A. Quality as measured by popularity, yes.</p>
353	<p>1 Q. Part of what you looked at is sort of</p> <p>2 the quality of the sound recordings that the indies</p> <p>3 who signed owned, correct?</p> <p>4 A. Well, to some degree, that fits into</p> <p>5 this, because when we talk about hits and iconic</p> <p>6 artists, that's the reference -- quality, normally</p> <p>7 in the industry, isn't what quality would mean in</p> <p>8 terms of a critic for The New York Times. The</p> <p>9 quality usually refers to popular, as opposed to</p> <p>10 satisfying the tastes of a critic.</p> <p>11 So if quality means popular and things</p> <p>12 that people want to hear on the radio, then I'm</p> <p>13 looking at quality.</p> <p>14 Q. All right. So let me go back to, I</p> <p>15 think, where I started on this line of questioning.</p> <p>16 You would -- one of the things that you</p> <p>17 looked at to determine whether the indies that</p> <p>18 signed were representative of the industry as a</p> <p>19 whole was the quality of the sound recordings they</p> <p>20 owned, right?</p> <p>21 A. Defined as the way I defined it.</p> <p>22 Q. Okay. And if the indies are not</p>	355	<p>1 Q. Now, before -- I'm going to come back</p> <p>2 to that, but before I go there, you would agree</p> <p>3 that a number of the indies that signed these</p> <p>4 direct licenses are very, very small, correct?</p> <p>5 A. Oh, that's right. A lot of them are</p> <p>6 single purpose. There may be single artists or may</p> <p>7 be single genre, they only have a handful of</p> <p>8 product, so they're -- you know, they're very, very</p> <p>9 tiny.</p> <p>10 They may be important in a particular</p> <p>11 genre, but they -- you know, like a label that</p> <p>12 specializes in music from the Ukraine is going to</p> <p>13 have an extremely low market share, but if</p> <p>14 you're -- if you have a two-hour --</p> <p>15 JUDGE WISNIEWSKI: Careful, Dr. Noll.</p> <p>16 THE WITNESS: I guess I walked into</p> <p>17 this one. If it's unbelievably great music from</p> <p>18 the Ukraine is the subject of a two-hour program.</p> <p>19 that label may be very important to you, but it's</p> <p>20 not important in the grand scheme of things in</p> <p>21 terms of total sales and popularity.</p> <p>22</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">356</p> <p>1 BY MR. HANDZO: 2 Q. Right. 3 In terms of the total sales and 4 popularity, some of the indies that signed these 5 direct licenses have something like less than, you 6 know, a tenth of one percent of market share, 7 right? 8 A. Much less than that. A hundredth of 9 1 percent in some cases, yes. 10 Q. You would agree with me that the 11 economic incentives of tiny fringe firms are very 12 different than the incentives operating on the 13 dominant firms in the recording industry, right? 14 A. I'm not sure that I agree with that. 15 They all have the same incentive to sell as much as 16 possible and make as much money as possible. But, 17 you know, they -- the -- these guys are 18 specialized, so in that sense they're different, 19 and they have an incentive to try to appeal to that 20 very specialized audience, whereas a large -- a 21 large indie, you know, the indies that have between 22 1/10th and 1 percent of the market have -- would</p>	<p style="text-align: right;">358</p> <p>1 A. That's why I answered the question in 2 the complex way I did. There's the financial part 3 and there's the target part, and the target part is 4 how they differ. 5 Q. The statement you made in your 6 deposition that I just read is correct, in your 7 opinion, is it not? 8 A. Yeah. I mean, if you're talking about 9 these little niche firms, they have a different 10 focus of their business strategy than the large 11 indies or the majors. 12 Q. You would agree that labels that have 13 this very small market share are getting very few 14 sound recording transmissions on SiriusXM, right? 15 A. Historically, yes, though they also 16 have the most to gain. 17 Q. And that anticipates my next question. 18 If you're not -- if you're a label that 19 is not played much, the strongest part of your 20 incentive is to get played more, right? 21 A. Well, I think everybody, that's a 22 strong part of their incentive. I mean, the -- the</p>
<p style="text-align: right;">357</p> <p>1 have the same incentives as a major. It's the 2 little specialized guys that just orient themselves 3 to a specific target market. 4 And if that's what you mean by having 5 different incentives, that's right, but they -- the 6 financial incentive is still the same. They're 7 trying to make as much money as they can, given 8 their focus. 9 Q. Right. Dr. Noll, let me ask you to 10 turn to Page 89 of SoundExchange Trial Exhibit 1, 11 your deposition. 12 A. Page 89, did you say? 13 Q. Page 89, yes, sir. 14 And do you see there at the top of the 15 page, near the top of the page where you say, But 16 this is an industry -- this is a firm -- this is an 17 industry with a very small number of dominant firms 18 and a very large number of tiny fringe firms, and 19 the incentives operating upon the fringe firms are 20 very different than the incentives operating upon 21 the dominant firms. 22 Do you see that?</p>	<p style="text-align: right;">359</p> <p>1 desire to get played more is true for everybody. 2 But the -- the little guy isn't getting much money 3 from the current system, regardless of what the 4 royalty rate is. 5 So they would be, you know, very much 6 interested in getting more plays. 7 Q. An indie that is getting played very 8 little, its strongest incentive in these 9 negotiations is to get played more, correct? 10 A. The incentive to get played more is 11 identical for everybody. So I don't think -- I 12 think I agree with what you're trying to get at, 13 but the way you're wording it isn't correct. 14 Everybody gets a certain -- you know, 15 they get the -- the overall royalty rate multiplied 16 by their share of plays. and an increase of one 17 play has the same financial implication for every 18 single firm, regardless of how big they are. That 19 isn't really what you mean. 20 What I think you're after isn't that. 21 I think it's -- I think it's the fact that somebody 22 who isn't getting played at all now, or is rarely</p>



# Capital Reporting Company

## Determination of Rates and Terms 06-06-2012 - Vol. II

360	<p>1 played, if SXM comes in and says we will do a</p> <p>2 program once a week that features your recordings,</p> <p>3 that would be going from zero to something, a big</p> <p>4 discrete change in what they were getting, and I</p> <p>5 agree with that, that -- that would be a --</p> <p>6 something that would be of interest -- of interest</p> <p>7 to them.</p> <p>8 Q. Right.</p> <p>9 You would agree, wouldn't you, that for</p> <p>10 an indie who is not getting played much now, the</p> <p>11 actual royalty rate is the least part of their</p> <p>12 incentive in the negotiation, and getting played</p> <p>13 more is the greatest part?</p> <p>14 A. I just said that. I said that no</p> <p>15 matter what the royalty rate is, it doesn't matter</p> <p>16 to you if you're not getting played.</p> <p>17 Q. So let's take an example. Do you</p> <p>18 recall that 12K Records is a licensee --</p> <p>19 A. Yes.</p> <p>20 Q. -- signed a direct license?</p> <p>21 And do you recall that they have</p> <p>22 something like 39 transmissions on SiriusXM in the</p>	362	<p>1 a very low base, it wouldn't be that hard to get a</p> <p>2 lot more in percentage terms, right?</p> <p>3 A. It depends. I mean, it really depends</p> <p>4 on how they match with the -- with the programming</p> <p>5 on SiriusXM that -- and I don't remember enough</p> <p>6 about 12K to be able to answer that question, but</p> <p>7 for a label that believes its library is suited to</p> <p>8 one of the channels on SiriusXM, they might hope to</p> <p>9 get a lot more plays on that channel.</p> <p>10 But if they're producing -- if -- you</p> <p>11 know, if -- if instead of Ukraine, it's Belarus,</p> <p>12 which has really terrible music, and there is no --</p> <p>13 JUDGE WISNIEWSKI: Have I told you</p> <p>14 about my other relatives?</p> <p>15 THE WITNESS: -- if there's no channel</p> <p>16 for their specialty, given they're really tiny,</p> <p>17 they probably have a specialty, and if there's no</p> <p>18 channels on that specialty, then they have less of</p> <p>19 an incentive than a major to try to get diversion</p> <p>20 of plays to their side.</p> <p>21 BY MR. HANDZO:</p> <p>22 Q. But all else equal, if you're a very</p>
361	<p>1 fourth quarter of 2011?</p> <p>2 A. Of course not. I don't remember that.</p> <p>3 Q. Let me represent --</p> <p>4 A. Guilty as charged.</p> <p>5 Q. -- let me represent to you that they</p> <p>6 had 39 transmissions.</p> <p>7 A. I think it was 41, but that's okay.</p> <p>8 (Laughter.)</p> <p>9 BY MR. HANDZO:</p> <p>10 Q. I'll go with you on that.</p> <p>11 Let me also represent to you that they</p> <p>12 paid a royalty -- or they were paid a royalty of</p> <p>13 about \$264, okay?</p> <p>14 A. Okay.</p> <p>15 Q. Now, with only 39 or 41 transmissions</p> <p>16 in -- in a quarter, 12K Records might realistically</p> <p>17 hope to double or triple or increase tenfold the</p> <p>18 number of transmissions, right?</p> <p>19 A. It might -- I don't know what the</p> <p>20 expectations were, but, yes, they could get more.</p> <p>21 yes.</p> <p>22 Q. Okay. And given they're starting from</p>	363	<p>1 small record company with a very low number of</p> <p>2 plays, because there are so few plays to begin</p> <p>3 with, you have a more realistic prospect of</p> <p>4 doubling, tripling, quadrupling, increasing by</p> <p>5 tenfold the number of plays.</p> <p>6 A. You might. That -- that might be an</p> <p>7 incentive operating on a little tiny label, yes.</p> <p>8 Q. And, conversely, if you're a record</p> <p>9 company that's only getting \$250 in royalties in a</p> <p>10 quarter from SiriusXM, you're not really gambling</p> <p>11 much by accepting a slightly lower rate, are you?</p> <p>12 A. I'm sorry, I didn't follow that</p> <p>13 question.</p> <p>14 Q. Sure.</p> <p>15 If the only royalties you were getting</p> <p>16 to begin with from SiriusXM were about \$250 a</p> <p>17 quarter, you're not really taking much of a risk</p> <p>18 agreeing to a slightly lower rate, are you?</p> <p>19 A. Well, you -- you -- yes, you could go</p> <p>20 from 250 to zero, and that's not much of a risk.</p> <p>21 And the issue is, is -- what is the prospect for</p> <p>22 that 250 being substantially larger? And it could</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">364</p> <p>1 be small, it could be large; it depends on the 2 circumstances. 3 Q. But you would agree, would you not, if 4 you're only getting \$250 a quarter, you're not 5 likely to probably lose a lot of sleep over what 6 the rate is? 7 A. We're back to the point. If you're not 8 getting paid very much, it doesn't matter what the 9 rate is, that's right. The people that really care 10 about the rate are the ones who are played a lot, 11 and that's mainly the majors. They're the ones who 12 care most about the rate. 13 Q. Now, let's leave aside the issue of 14 size and come back to what we were talking about 15 before, which was what I think is your conclusion, 16 that the labels who signed these direct licenses 17 are representative of the quality of the larger 18 recording industry. 19 Am I characterizing that correctly? 20 A. Well, again, with my definition of 21 quality, since I don't know what yours is. 22 Q. Let me ask it this way: You would</p>	<p style="text-align: right;">366</p> <p>1 service. 2 Q. You would agree that there are some 3 sound recordings that are just so current and 4 popular that SoundExchange really -- I'm sorry -- 5 SiriusXM really needs to have them, right? 6 A. Well, yes and no. I mean, that does 7 address -- yes, it's true that they would want to 8 have certain important hit sound recordings for all 9 labels, whether majors or indies. Those recordings 10 constitute a relatively small fraction of their 11 plays. 12 And so you can -- for example, if -- 13 suppose all the record companies were charging rate 14 X except Universal, and Universal decided to charge 15 2X, SiriusXM wouldn't drop them entirely. They 16 would still play the most particular records 17 available on Universal, but they would dramatically 18 cut back on all the other stuff. 19 And you can -- and so it may well be 20 that for Universal, the 2X rate, when everybody 21 else is at X, generates less revenue for them, even 22 though they do have sort of iconic recordings that</p>
<p style="text-align: right;">365</p> <p>1 agree, wouldn't you, that the demand by Sirius for 2 sound recordings is a derived demand? 3 A. Yes. 4 Q. So it's derived from the consumers' 5 demand for the sound recordings, right? 6 A. Well, it's -- it's -- it's a -- it's 7 derived in a -- in a special way, yes. It's not 8 just the consumers' demand for a particular type of 9 music, but it's the demand, given the stakes of 10 competition, all right, because the incremental 11 value of SiriusXM to somebody who listens to the 12 same kind of music that is common on over-the-air 13 radio, for example, that there's a narrow range of 14 reasons for them to subscribe to SiriusXM. There's 15 the ubiquity reason, and there's the 16 commercial-free reason. 17 But for people whose main interest is 18 genres that are not played on over-the-air radio, 19 then SiriusXM has an incremental -- an additional 20 advantage, which is it's the only, you know -- it 21 gives you access to something you otherwise would 22 not have access to unless you subscribe to some</p>	<p style="text-align: right;">367</p> <p>1 neither SiriusXM nor Pandora nor a radio station 2 could ever ignore. 3 Q. Well, I hate to use the word "iconic" 4 in this context, but let's take Lady Gaga. 5 A. Okay. You take her. 6 CHIEF JUDGE BARNETT: Please. 7 BY MR. HANDZO: 8 Q. SiriusXM can't substitute away from 9 Lady Gaga, right? 10 A. Well, they can play her less 11 frequently, yes, but will they play her? Of 12 course. 13 Q. So when you assess quality in the 14 context of your testimony here, you're looking at 15 the success of sound recordings in the market to 16 see whether they're popular, right? 17 A. Yes, that's part of it, what -- what 18 are the hit records in their genre, yes. 19 Q. And you attempted to make that -- that 20 assessment with respect to the indies who had 21 signed deals at the time of your written testimony, 22 correct?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">368</p> <p>1 A. Yes, I did that. I'm not the -- I 2 checked it -- actually, the reality is, that wasn't 3 really my assignment, but I did it anyway because I 4 wanted to convince myself. But there also is 5 testimony by others on this same issue. 6 But I did -- as you know from my -- all 7 the various versions of my reports, I have done 8 reviews of the libraries of the indies that did 9 sign with SiriusXM. 10 Q. And your discussion of the -- your 11 assessment of the quality of the sound recordings 12 owned by the indies who signed direct licenses 13 appears at Pages 42 through 45 of your revised 14 written direct testimony; is that right? 15 A. I assume so. 16 Q. Why don't you take a moment and take a 17 look, and I will take a moment to get your 18 testimony. 19 (Whereupon, the witness reviews the 20 document.) 21 BY MR. HANDZO: 22 Q. Okay. You've had a chance to --</p>	<p style="text-align: right;">370</p> <p>1 Q. Right. 2 Okay. And you reached your conclusions 3 for that written report about the quality of the 4 sound recordings essentially just by looking at a 5 list of the recordings and deciding whether, in 6 your own mind, they were hits or popular, correct? 7 A. No. I actually matched the recordings 8 to actual Billboard Top 100 and Top 200. I 9 actually -- there's more work there than implied by 10 that. 11 But the basic story is, yes, look 12 across the independent labels, see how -- how they 13 compare in terms of the -- the types of music, the 14 age of music, and the popularity of music that they 15 have. 16 And I was also interested in where they 17 fit into the SiriusXM channels, too, because the 18 distribution of channels on SiriusXM is not 19 strictly proportional to popularity for the reason 20 I gave, that -- that they have an important 21 competitive niche to provide music that 22 over-the-air broadcasters don't provide.</p>
<p style="text-align: right;">369</p> <p>1 A. That's -- the answer is yes, those are 2 the right pages. 3 Q. Okay. So just so the record is clear, 4 starting on Page 42 of your testimony, you have a 5 heading that says Types and Quality of Recordings. 6 Do you see that? 7 A. Yes. 8 Q. And that section ends on Page 45? 9 A. Yes. 10 Q. Okay. So that section of your 11 testimony contains your assessment of the quality 12 of -- of the direct licenses that existed at the 13 time you wrote your testimony, right? 14 A. Well, not -- that's not the accurate -- 15 the first sentence refers to Mr. Gertz and 16 Mr. Blatter, and this is my own verification of 17 what their opinions are, and I wanted to convince 18 myself that I could endorse their opinions. 19 Q. So to the extent that you performed 20 your own analysis of the quality, this is where we 21 find it, right? 22 A. As of November, yes.</p>	<p style="text-align: right;">371</p> <p>1 Q. Okay. But with respect to your 2 assessment of the quality of sound recordings in 3 your written testimony, and this appears to be 4 around Pages 43 to 45, you don't offer any 5 quantitative analysis? 6 A. No, there isn't any that really -- 7 because the -- the -- the -- there isn't 8 really any you could do. I might add, that the -- 9 the issue here is whether, as -- as is obvious from 10 the way it's explained, it's whether the -- the mix 11 of independent labels they have fit into their 12 channel mix. 13 Again, back to your question about 14 derived demand, the demand of SiriusXM for music is 15 based upon the demand of its customers, not the 16 demand of the population in general for music. 17 And its customers are skewed in -- in 18 the types of music that isn't played on 19 over-the-air radio. And so that -- you have to -- 20 you have to match the popularity within a genre 21 with the -- with whether that genre is actually 22 being played on SiriusXM.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

372	<p>1 So you could be the most popular thing</p> <p>2 in the world and it wouldn't be attractive to</p> <p>3 SiriusXM, because they don't have a channel like</p> <p>4 that, they don't have any customers who want it.</p> <p>5 So it's a little bit more complex than</p> <p>6 simply what do I think the hit records are. It's</p> <p>7 more than that.</p> <p>8 Like, for example, do they have a</p> <p>9 musical theater channel? Yes, they do. Well, then</p> <p>10 musical theater is important.</p> <p>11 Do they have classical music channels?</p> <p>12 Yes. Well, then labels that specialize in</p> <p>13 classical music are important.</p> <p>14 That's the way I approached it.</p> <p>15 Q. Okay. But leaving aside sort of</p> <p>16 looking at the recordings that these indies had and</p> <p>17 seeing whether they fit into the channels that</p> <p>18 SiriusXM offers, in terms of assessing the</p> <p>19 popularity to consumers, you were basically just</p> <p>20 looking at these things and deciding whether you</p> <p>21 thought they were popular, right?</p> <p>22 A. Well, whether they appeared on their</p>	374	<p>1 A. -- I do that just for consumption</p> <p>2 value.</p> <p>3 Q. Okay. You're saying you do that</p> <p>4 generally?</p> <p>5 A. I do that generally, and I'm aware of</p> <p>6 these things, and I -- I consulted those things</p> <p>7 here. I also consulted Emmy lists and things like</p> <p>8 that, GRAMMY lists.</p> <p>9 Q. You didn't make any effort to go</p> <p>10 through the sound recordings owned by the indies</p> <p>11 that signed direct licenses and do an analysis that</p> <p>12 said, here's how they all appeared on Billboard</p> <p>13 charts at this particular time?</p> <p>14 A. No, I didn't attempt to do that, no.</p> <p>15 Q. So with respect to the examples that</p> <p>16 you cite, you mentioned former hit singles owned by</p> <p>17 Cleopatra Records.</p> <p>18 Do you see that?</p> <p>19 A. Um-hum. I do.</p> <p>20 Q. And you mention Flashdance,</p> <p>21 Total Eclipse of the Heart and Gangsta's Paradise?</p> <p>22 A. Yes.</p>
373	<p>1 genre popularity list, yes.</p> <p>2 Q. Okay. And you give us, in your</p> <p>3 testimony on Pages 44 and 45, some examples of the</p> <p>4 indie sound recordings that you viewed as -- as</p> <p>5 popular; is that right?</p> <p>6 A. Well, again, it's not my view is</p> <p>7 popular. It wasn't just me, all right? I actually</p> <p>8 consulted other things.</p> <p>9 But, yes, these are some illustrations</p> <p>10 of the kinds of music that are available on the</p> <p>11 indies that would be attractive to SiriusXM because</p> <p>12 they specialize in that kind of music. They have</p> <p>13 channels that specialize in that kind of music.</p> <p>14 Q. All right. And when you say you looked</p> <p>15 at other things, I -- as I understand it, what</p> <p>16 you're talking about is you relied on the testimony</p> <p>17 of other SiriusXM witnesses in this case, correct?</p> <p>18 A. Well, as I said before, I also have</p> <p>19 this problem that I actually look at Billboard Top,</p> <p>20 you know, ratings by types of music and things like</p> <p>21 that, yes --</p> <p>22 Q. Okay.</p>	375	<p>1 Q. And are you aware that what Cleopatra</p> <p>2 Records owns are not the originals of those</p> <p>3 recordings, they're rerecords?</p> <p>4 A. Actually, there are several of the</p> <p>5 labels that do that. That's one of the big</p> <p>6 businesses now is to do rerecordings of old records</p> <p>7 and compete directly with the majors who were the</p> <p>8 original releasers of those records.</p> <p>9 Q. Okay. But to be clear, the Cleopatra</p> <p>10 ones are rerecords, not the originals, right?</p> <p>11 A. Oh, yes. And there's several others</p> <p>12 that are -- K-tel is in that category. There's</p> <p>13 several -- that's a fairly big business.</p> <p>14 Public Broadcasting raises money doing that with</p> <p>15 T.J. Lubinsky specials. Those are basically</p> <p>16 producing rerecordings of old records.</p> <p>17 Q. And are you aware that during the</p> <p>18 fourth quarter of 2011, after Cleopatra signed its</p> <p>19 direct license, none of the Cleopatra rerecords</p> <p>20 were played even once by SiriusXM?</p> <p>21 A. I don't know whether in -- in --</p> <p>22 subsequent -- in 2012, I haven't looked to see what</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

376	<p>1 records were played on Cleopatra. I have -- I've</p> <p>2 only asked -- I've only looked at the generic</p> <p>3 information about what was -- what were the plays</p> <p>4 in the first quarter of 2012 of the licenses in</p> <p>5 general, as opposed to each one specifically.</p> <p>6 Q. Now, on the next page, you discuss</p> <p>7 Eardrum Records, which owns the George Carlin</p> <p>8 comedy albums?</p> <p>9 A. Oh, yes.</p> <p>10 Eardrum was a label that was purchased</p> <p>11 by George Carlin, and he owned it until he died,</p> <p>12 and it was -- once he bought it, it was basically a</p> <p>13 single artist label.</p> <p>14 Q. And sort of midway down the first full</p> <p>15 paragraph on that Page 45, you say that Carlin</p> <p>16 accounts for four of the top 25 comedy records of</p> <p>17 all time as ranked by amazon.com?</p> <p>18 A. Yes, on -- on the Amazon Web site.</p> <p>19 There's a reproduction of, I think it's called</p> <p>20 Listmania, which is a -- a Delphi way to produce</p> <p>21 top lists, and Amazon reproduced that list, posted</p> <p>22 it on its Web site.</p>	378	<p>1 marked as SoundExchange Trial Exhibit 2. And you</p> <p>2 had referred just before we broke to an Amazon</p> <p>3 Web site that was apparently the source of your</p> <p>4 written testimony about the popularity of</p> <p>5 George Carlin albums.</p> <p>6 This is the Web site. is it not?</p> <p>7 A. This is the Web page, yeah.</p> <p>8 Q. Okay.</p> <p>9 A. This is -- this is the version -- the</p> <p>10 list that appeared on the Amazon site, yes.</p> <p>11 Q. Okay.</p> <p>12 And if we look at this, this list is</p> <p>13 not actually a list by Amazon, correct?</p> <p>14 A. It's a list posted by Amazon. It was</p> <p>15 created by this Delphi process that I described.</p> <p>16 It's a Web site that -- where the guy who runs it</p> <p>17 says, let's do a list about X, and then people</p> <p>18 interact for a while and try to settle on what the</p> <p>19 list is, and then the list is published.</p> <p>20 Q. Okay. This list, in fact, was created</p> <p>21 by a guy by the name of J. Christal?</p> <p>22 A. Christal is the one who runs this --</p>
377	<p>1 Q. Dr. Noll, I'm going to show you what</p> <p>2 we'll mark as SoundExchange Trial Exhibit Number 2.</p> <p>3 CHIEF JUDGE BARNETT: Is this a good</p> <p>4 time for us to take a break?</p> <p>5 MR. HANDZO: Yes, this is fine.</p> <p>6 CHIEF JUDGE BARNETT: We will take a</p> <p>7 morning recess for a few minutes.</p> <p>8 (Whereupon, a brief recess was taken</p> <p>9 from 10:50 a.m. to 10:58 a.m.)</p> <p>10 CHIEF JUDGE BARNETT: Good morning</p> <p>11 again.</p> <p>12 Please be seated.</p> <p>13 Mr. Handzo, you had some -- another</p> <p>14 exhibit you wanted to introduce.</p> <p>15 MR. HANDZO: I did have another</p> <p>16 exhibit. And here it is.</p> <p>17 (SoundExchange Trial Exhibit Number 2</p> <p>18 was marked for identification</p> <p>19 purposes.)</p> <p>20 CHIEF JUDGE BARNETT: As if by magic.</p> <p>21 BY MR. HANDZO:</p> <p>22 Q. Dr. Noll, I've showed you what we've</p>	379	<p>1 this Delphi Web site, yes.</p> <p>2 Q. And so he listed his qualifications as</p> <p>3 being a comedy, music and movie fan?</p> <p>4 A. Oh, yes.</p> <p>5 This is a fan-based -- this is a</p> <p>6 fan-generated list. This is a consumer-generated</p> <p>7 list. It's on this -- on this interactive</p> <p>8 Web site, yes.</p> <p>9 Q. So when you say in your written</p> <p>10 testimony that Carlin accounts for four of the top</p> <p>11 25 comedy albums of all time as ranked by Amazon,</p> <p>12 in fact, this isn't a ranking by Amazon?</p> <p>13 A. As published by Amazon. They didn't do</p> <p>14 the ranking. A bunch of fans did the ranking, yes.</p> <p>15 Q. And this doesn't reflect any</p> <p>16 quantitative analysis by Amazon or anybody else?</p> <p>17 A. No. This is supposed to be what fans</p> <p>18 of comedy records regard as the best comedy</p> <p>19 records. So it doesn't have -- it -- it doesn't</p> <p>20 reflect Amazon sales, if that's what you're after,</p> <p>21 no. It reflects generic popularity.</p> <p>22 It's generic popularity, actually.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

380	<p>1 that's important from the point of view of</p> <p>2 programming a radio station.</p> <p>3 Q. Generic popularity as reported by</p> <p>4 J. Christal, Teaneck, New Jersey, right?</p> <p>5 A. Well, no. As I said, there's --</p> <p>6 there's hundreds of people who participate in this</p> <p>7 process; it's not just him. He's the one that runs</p> <p>8 the site.</p> <p>9 Q. Now, sticking with the subject of</p> <p>10 quality for a moment, earlier --</p> <p>11 JUDGE WISNIEWSKI: Are you moving from</p> <p>12 this exhibit, Mr. Handzo?</p> <p>13 MR. HANDZO: Yes.</p> <p>14 JUDGE WISNIEWSKI: I have one quick</p> <p>15 question for you.</p> <p>16 Do I understand that, according to</p> <p>17 what's on the right-hand side of this, that this</p> <p>18 was last updated on January 23 of 2002, about</p> <p>19 10 years ago?</p> <p>20 THE WITNESS: The one that they printed</p> <p>21 out. I don't know if there's other -- I can't</p> <p>22 testify that this is the version that I looked at.</p>	382
381	<p>1 I can only testify that I looked at something that</p> <p>2 looked like this. I obviously didn't access it in</p> <p>3 2002. I do not know when -- whether it's -- you</p> <p>4 know, what version of it I saw.</p> <p>5 JUDGE WISNIEWSKI: Okay. Thank you.</p> <p>6 BY MR. HANDZO:</p> <p>7 Q. Actually, just further to that point,</p> <p>8 if you look at the bottom of that page, do you see</p> <p>9 the -- the URL there, there's a date?</p> <p>10 A. Yes.</p> <p>11 Q. Which is November 2011?</p> <p>12 A. Yes.</p> <p>13 Q. And this was actually produced with a</p> <p>14 SiriusXM Bates number, correct?</p> <p>15 A. Yes, although that's not what I --</p> <p>16 I've -- I've never seen the SiriusXM production.</p> <p>17 Q. Okay. Sticking with the subject of</p> <p>18 popularity just a little while longer, if you go</p> <p>19 back to Page 39 of your written testimony, carrying</p> <p>20 over to Page 40, you see that you talk there about</p> <p>21 the top albums for 2010 as ranked by Billboard?</p> <p>22 A. Yes.</p>	383
	<p>1 Q. And you say that of those top 200</p> <p>2 albums, it looks like 170 were produced by the</p> <p>3 majors?</p> <p>4 A. The numbers say what the numbers say,</p> <p>5 yeah. I --</p> <p>6 (Whereupon, the witness reviews the</p> <p>7 document.)</p> <p>8 THE WITNESS: Yeah.</p> <p>9 170 albums were produced by the majors,</p> <p>10 plus, in addition to that, 11 of the labels</p> <p>11 producing 25 of the top 200 were distributed by the</p> <p>12 majors.</p> <p>13 BY MR. HANDZO:</p> <p>14 Q. Okay. And of the five remaining</p> <p>15 Billboard Top 200 albums in 2010, none of them were</p> <p>16 produced and distributed by any of the indies that</p> <p>17 signed direct licenses, correct?</p> <p>18 A. As of November, no.</p> <p>19 Q. All right. Let me change the subject.</p> <p>20 I wanted to talk about the analysis you</p> <p>21 did of the Last.fm agreement.</p> <p>22 And to begin, am I correct that the</p>	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

384	<p>1 Q. Okay.</p> <p>2 A. -- and Last.fm, among those that have</p> <p>3 the least amount of customization, it's the one --</p> <p>4 the only one for which there are licenses.</p> <p>5 Q. Okay. Let me maybe put it another way.</p> <p>6 Your analysis uses rates which, so far</p> <p>7 as you know, only Last.fm ever got, right?</p> <p>8 A. I can't -- I can't testify to that,</p> <p>9 whether anybody else in the 2,000 licenses I saw</p> <p>10 had a rate within the range of the rates that</p> <p>11 Last.fm got, because that's not the -- I didn't</p> <p>12 pick on the basis of what the rates were; I picked</p> <p>13 on the basis of what the service was.</p> <p>14 So I don't know from memory what the</p> <p>15 other 2,000 licenses have in them as rates.</p> <p>16 My -- my memory seems to be that there</p> <p>17 were other rates in the -- in the 25 to 30 range,</p> <p>18 but I -- I'm not sure, because that -- I -- I</p> <p>19 didn't attempt to memorize that because I excluded</p> <p>20 them for some other reason.</p> <p>21 Q. Okay. Let's put it this way: As you</p> <p>22 sit here today, you can't recall any other</p>	386	<p>1 percentage rates.</p> <p>2 Q. But in terms of this Court's Web III</p> <p>3 rates, there is no percentage of revenue rate,</p> <p>4 there's just a per-play?</p> <p>5 A. Yes.</p> <p>6 And so -- there again, my understanding</p> <p>7 is that I can't use the webcasting -- I did that</p> <p>8 calculation, but I was told I couldn't use it</p> <p>9 because it -- that those rates were not -- couldn't</p> <p>10 be used as precedent in this case, so . . .</p> <p>11 Q. So let me make sure I understand.</p> <p>12 You were being told that you could</p> <p>13 not use the Web III rates published by this</p> <p>14 Court?</p> <p>15 A. I know about them, and I can do the</p> <p>16 calculations, but they wouldn't be regarded as a</p> <p>17 valid benchmark for these rates here because they</p> <p>18 were determined by a regulatory process. They</p> <p>19 didn't meet the willing buyer/willing seller test.</p> <p>20 Q. Okay. And, in your opinion, is it</p> <p>21 correct that you should not use a regular -- a rate</p> <p>22 set by a regulatory process to set a different</p>
385	<p>1 webcasters who got the benefit of the rates you're</p> <p>2 using in this analysis?</p> <p>3 A. I can't from memory, no, but the</p> <p>4 licenses speak for themselves as to what -- the</p> <p>5 range. We can easily produce a table of what the</p> <p>6 rates were in all 2009 licenses.</p> <p>7 Q. Now, the rate that lots of current</p> <p>8 webcasters actually pay is the statutory rate set</p> <p>9 by this Court in Web III, right?</p> <p>10 A. Yeah, the -- that is available; the</p> <p>11 statutory rate is available, yes.</p> <p>12 Q. Okay. So if we wanted to use the</p> <p>13 webcasting market as a benchmark, and if we were</p> <p>14 going to use this Court's rates, we'd have to know</p> <p>15 the number of plays of sound recordings on</p> <p>16 SiriusXM, right?</p> <p>17 A. If you were going to use the per-play</p> <p>18 rate, yes, you could use the percentage rate.</p> <p>19 That's why I did the calculations, to see how the</p> <p>20 per-play rates stack up relative to the percentage</p> <p>21 rates. I wanted to be sure that there wasn't a big</p> <p>22 disparity between the per-play rates and the</p>	387	<p>1 regulatory rate?</p> <p>2 A. I don't make the rules. Of course.</p> <p>3 That's why I did the calculation. I wanted to see</p> <p>4 what the competitive relationship was between the</p> <p>5 statutory -- the people under the statutory rate</p> <p>6 and the people under the negotiated rates. And I</p> <p>7 investigated it, and I found it was basically the</p> <p>8 same.</p> <p>9 Q. Okay. Just to be clear, you didn't use</p> <p>10 the statutory rate set by this Court for webcasting</p> <p>11 because you were under the impression that, as a</p> <p>12 legal matter, you could not?</p> <p>13 A. No, it's not as a legal matter, it's</p> <p>14 how the process works. It's that if you're doing a</p> <p>15 willing buyer/willing seller test, you're looking</p> <p>16 at market rates, and a regulated rate is not a</p> <p>17 market rate. So you're looking at what's</p> <p>18 negotiated between two parties in a market.</p> <p>19 And so then the question is -- so</p> <p>20 eventually Webcaster III set some rates, and some</p> <p>21 people offer that and some people negotiate other</p> <p>22 rates, and it depends on the nature of the service</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

388	<p>1 they have. But -- but the regulated rate is not a 2 market-determined rate, so using it as a 3 market-determined benchmark would be inappropriate. 4 But I did -- nonetheless, I was 5 interested in the question of the competitiveness, 6 you know, is there a huge competitive disadvantage 7 imposed on somebody because of the presence of 8 these rates? So I did examine that question. 9 JUDGE WISNIEWSKI: If I could just 10 interrupt for one quick question. 11 Dr. Noll, when you talk about a 12 regulated rate, are you also encompassing a 13 legislative rate in that answer? 14 THE WITNESS: Yes, I'm aware of those. 15 I didn't do anything with respect to those. 16 JUDGE WISNIEWSKI: For the same reason? 17 THE WITNESS: No, no. It seems to me 18 that what comes out of this Panel is more probative 19 of the results of real process that confronts 20 evidence than what comes out of Congress, okay? 21 I think it just had more interest is 22 all.</p>	390	<p>1 from which one -- where Pandora basically says, 2 here's the percentage of revenue that we pay, and 3 it's not going to corroborate what he's doing. 4 So I'd like to ask that question, but I 5 just sort of thought I would flag it for the Court 6 before I blurted out the numbers. 7 MR. RICH: If I'm understanding -- I'm 8 not sure I completely understand, but if I'm 9 understanding Mr. Handzo's directives, that he'd 10 like to unilaterally waive that nonprecedential 11 understanding between SoundExchange, his client, 12 and the third party not represented here in order 13 to impeach testimony that was not offered by our 14 witness, because he testified he was unavailable -- 15 he viewed himself as unavailable to use it. 16 It seems to me, if I'm understanding it 17 correctly, that it would be highly inappropriate. 18 JUDGE ROBERTS: Where, Mr. Handzo, are 19 you referring to Dr. Noll using that? 20 MR. HANDZO: Yesterday -- 21 JUDGE ROBERTS: It's not in the written 22 testimony.</p>
389	<p>1 JUDGE WISNIEWSKI: You would say that 2 the legislative process even less reflects the 3 willing buyer/willing seller? 4 THE WITNESS: Exactly. 5 JUDGE WISNIEWSKI: Thank you. 6 MR. HANDZO: I'm pausing for a moment 7 because I think there's an issue I want to raise 8 with the Court before I ask this question of 9 Dr. Noll. 10 Yesterday, in Dr. Noll's direct 11 testimony, he was asked some questions by Mr. Rich, 12 and he lamented the fact that he couldn't use 13 certain nonprecedential deals, deals that were 14 nonprecedential under the Webcaster Settlement 15 Act. 16 And in my listening to that testimony, 17 my strong takeaway was that Dr. Noll and counsel 18 were implying to the Court that had they just been 19 able to use that, it surely would have corroborated 20 what he was doing. 21 Now, in fact, the evidence that 22 Dr. Noll cites in his testimony includes evidence</p>	391	<p>1 MR. HANDZO: Oh, no. I'm sorry. It's 2 not in the written testimony. It was yesterday. 3 JUDGE ROBERTS: I thought that it was 4 that. 5 MR. HANDZO: I know. I may have 6 misspoken. 7 JUDGE ROBERTS: Okay. 8 MR. HANDZO: Yesterday, Dr. Noll said, 9 I mean, I identified other close substitutes like 10 Pandora as another one, but I can't use that rate 11 because it's a WSA rate. 12 Then Mr. Rich said, So to be clear, 13 barring technical bars, for example, parties saying 14 no party shall use this, it's conceivable that you 15 would have had multiple additional corroborating 16 benchmarks, in your view. 17 And Dr. Noll said, Oh, yes. 18 And then later on he said, I should add 19 that, you know, Pandora is the poster child here, 20 but I can't use that rate. 21 So the -- the implication was, gee, if 22 I could just use that rate, wouldn't it be great.</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

392	<p>1 I know these rates are precedential. I stood up 2 and argued that -- nonprecedential, rather. I 3 stood up and argued that at great length. 4 But I think I'm entitled to rebut the 5 implication that Pandora's rate would have 6 corroborated what they were doing. I didn't open 7 that door, Dr. Noll did. 8 But I don't think he should be allowed 9 to imply that Pandora would've corroborated when we 10 know it won't. And the evidence is in his own 11 testimony, or at least cited in his own testimony. 12 MR. RICH: Your Honor, a couple of 13 points. 14 You can certainly ask the witness 15 himself what he did imply or mean to imply or not, 16 I think it's a vast overstatement. 17 This was a series of questions, as I 18 recall, from me, prompted by Mr. Handzo's opening, 19 suggesting and corroborated by his 20 cross-examination now that the Last.fm is a single 21 unitary agreement and an outlier. 22 Dr. Noll was simply commenting that</p>	394	<p>1 the question you want the answer to? 2 MR. HANDZO: That's fine. 3 CHIEF JUDGE BARNETT: I think Mr. Rich 4 framed it, what were you implying and, you know, 5 based on what. 6 BY MR. HANDZO: 7 Q. Dr. Noll, let me ask you to turn to 8 Page 66 of your written testimony. 9 And do you see at Footnote 64, you cite 10 the Pandora 10-Q? 11 A. That's correct. 12 Q. Did you review that 10-Q? 13 A. Yes, I did. 14 Q. And are you aware in that 10-Q, Pandora 15 stated the percentage of revenues that it pays to 16 SoundExchange? 17 A. Yes. 18 And that's for all of its services, not 19 the one that would be the -- not just the one that 20 would be the benchmark for SiriusXM. 21 Q. Okay. And you're aware that that 22 percentage is substantially higher than the</p>
393	<p>1 there were circumstances out of his control which 2 prevented him from looking at a larger body which 3 conceivably -- conceivably, that was the adverb -- 4 might have made a more robust analysis. He wasn't 5 purporting to do the analysis. 6 If Mr. Handzo is suggesting that he and 7 his client have the wherewithal to open up those 8 restrictions on those agreements, I suspect 9 Dr. Noll would welcome that and would, in 10 connection with his rebuttal report, examine those 11 documents and return to this Court and identify 12 what he thought was probative about them. 13 Short of that, to hijack it with a 14 counsel-only interpretation of the agreements, 15 really, testimony from Mr. Handzo about them, seems 16 really inappropriate. 17 MR. HANDZO: Well -- and let me just 18 respond to that last part. To be clear, I don't 19 intend to just testify myself. The answer is in 20 the Pandora 10-Q, which Dr. Noll cites in his 21 report. 22 CHIEF JUDGE BARNETT: Why don't you ask</p>	395	<p>1 percentage you're using for your calculations, 2 correct? 3 A. The way to deal with Pandora is you 4 take the per-play rate that Pandora plays and apply 5 it to an estimate of the number of plays per 6 subscriber per month that SiriusXM has, and you 7 determine what the -- remember, how I do my 8 calculation is you produce a dollar number of the 9 royalty that would be paid, and then you divide 10 that by the actual average revenue per user, and 11 that's how you get the percentage rate. 12 And so I think Pandora is .0014. 13 Multiply that by 300, you get a number that's how 14 many -- how much per month per user that they would 15 pay in royalties, and -- and it turns out that it's 16 actually less than the percentage rate, the 20 -- 17 the 25 percent percentage rate as a fraction of 18 the -- of the value of the music. 19 So I actually have done that -- as I 20 said to you earlier, I've done that calculation. 21 I've taken the per-play rate, multiplied it by an 22 estimate of the plays per user per month and come</p>

# Capital Reporting Company

## Determination of Rates and Terms 06-06-2012 - Vol. II

396	<p>1 up with a dollar royalty, and it falls within the</p> <p>2 range of the -- of the rates that I state in my</p> <p>3 report.</p> <p>4 But I didn't say that in my report,</p> <p>5 because I thought that it wasn't legitimate to say</p> <p>6 it. But now I've said it, because that's what I</p> <p>7 did.</p> <p>8 Q. The reality is that, according to the</p> <p>9 Pandora 10-Q, they pay a very substantially higher</p> <p>10 percentage of revenue than what you're using in</p> <p>11 your report, correct?</p> <p>12 A. Yes, they do, because they offer</p> <p>13 multiple services. And the rate they pay for</p> <p>14 services that are not comparable to SiriusXM is</p> <p>15 irrelevant. They only derive, I think it's,</p> <p>16 13 percent of their revenues from their</p> <p>17 subscription service.</p> <p>18 So the subscription service,</p> <p>19 advertiser-free subscription service that Pandora</p> <p>20 offers is the one that would be the benchmark, the</p> <p>21 relevant -- the closest benchmark to SiriusXM, and</p> <p>22 that one is subject to a per-play rate and a</p>	398	<p>1 about Pandora?</p> <p>2 A. Yes.</p> <p>3 Q. And you talk about the -- toward the</p> <p>4 bottom of the page and the carryover to the next</p> <p>5 page, the number of Pandora devices and the percent</p> <p>6 of listening hours and so on?</p> <p>7 A. Yes.</p> <p>8 Q. And that's all from all of the Pandora</p> <p>9 services, that is, both free to the consumer and</p> <p>10 subscription, correct?</p> <p>11 A. This is -- yeah, this paragraph is</p> <p>12 about the fraction of the total radio audience</p> <p>13 accounted for by various things, all right? So it</p> <p>14 includes advertiser-supported and -- because there</p> <p>15 isn't any data that's more refined than that. We</p> <p>16 don't know how to break down -- the Internet</p> <p>17 services, in general, provide multiple services,</p> <p>18 and we don't have any way -- there's no way --</p> <p>19 there's no data available on how they break down.</p> <p>20 So the audience data that are in the</p> <p>21 published literature and that are analyzed by Wall</p> <p>22 Street people and things like that refer to the</p>
397	<p>1 percentage of revenue -- of revenue rate.</p> <p>2 So what you'd want to do is unpack all</p> <p>3 the royalties they pay for everything and just get</p> <p>4 the number they pay just for the subscription music</p> <p>5 service. And that would be the one you would</p> <p>6 compare to SiriusXM. And you can't get that out of</p> <p>7 the 10-Q or the 10-K, because I tried.</p> <p>8 Q. So what I hear you saying is that the</p> <p>9 Pandora free to consumer ad-supported webcasting</p> <p>10 service is not one that you regard as relevant for</p> <p>11 this analysis?</p> <p>12 A. It's not the closest competitive</p> <p>13 substitute for SiriusXM. The closest competitive</p> <p>14 substitutes for SiriusXM are noninteractive</p> <p>15 services that do not have advertising. And</p> <p>16 that's -- and that's one of the three services that</p> <p>17 Pandora offers, and that's the one I would focus</p> <p>18 on.</p> <p>19 Q. Well, let me ask you to turn to Page 65</p> <p>20 of your testimony.</p> <p>21 A. Okay.</p> <p>22 Q. And do you see there where you talk</p>	399	<p>1 overall radio audience. They don't refer to it in</p> <p>2 the way that would be relevant here, which is the</p> <p>3 most -- the most relevant here, which is, what is</p> <p>4 the audience for the paid services that look like</p> <p>5 SiriusXM. There's no -- there's no audience data</p> <p>6 available for that.</p> <p>7 Q. Okay. And in terms of your description</p> <p>8 of the competitive environment for SiriusXM, you</p> <p>9 were including both the Pandora free to the</p> <p>10 consumer and Pandora subscription service, correct?</p> <p>11 A. Yes, I was, for saying what is the --</p> <p>12 what is the scope of competition in the market.</p> <p>13 SiriusXM -- if you -- like, Pandora says its</p> <p>14 competitors include Terrestrial Radio and SiriusXM.</p> <p>15 SiriusXM's 10-Ks say our competitors</p> <p>16 are Terrestrial Radio and Pandora.</p> <p>17 They -- they all compete with each</p> <p>18 other for audience, but they're qualitatively</p> <p>19 different, and they -- in the nature of their</p> <p>20 service, and they pay different royalty rates that</p> <p>21 are based in part on those qualitative differences.</p> <p>22 So, yes, they compete with each other.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

400	<p>1 If we were doing a market analysis, like the kind</p> <p>2 you do as to whether Sirius and XM should be</p> <p>3 allowed to merge, you do a different analysis than</p> <p>4 if what you're trying to do is find the nearest</p> <p>5 comparable license for product, and that is find</p> <p>6 the service that looks most like SiriusXM, because</p> <p>7 we know that the nature of these market contracts</p> <p>8 is a function of the nature of the service.</p> <p>9 And, indeed, we see that with the</p> <p>10 Last.fm and Slacker agreements, where they have</p> <p>11 different royalty rates for different services.</p> <p>12 They have four different services with four</p> <p>13 different rates.</p> <p>14 Q. Let me come back to the Last.fm</p> <p>15 agreement, then. That agreement had a greater -- a</p> <p>16 formula under which Last.fm paid a greater of a</p> <p>17 per-play rate or a percentage of revenue rate,</p> <p>18 correct?</p> <p>19 A. That's correct. I talked about this</p> <p>20 yesterday, actually.</p> <p>21 Q. And you concluded in your testimony</p> <p>22 that the percentage of revenue rate would have been</p>	402	<p>1 I got some more information in discovery.</p> <p>2 Q. And the number that you used for that</p> <p>3 calculation in terms of the number of plays came</p> <p>4 from one month for one record company, correct?</p> <p>5 A. That's true, except I cited others that</p> <p>6 were in other discovery documents for other</p> <p>7 companies that were in the same range. The numbers</p> <p>8 I saw varied between 150 and 300, something like</p> <p>9 that, depending on the company, the month, you</p> <p>10 know, whatever.</p> <p>11 Q. Now, you're aware that Dr. Pelcovitz in</p> <p>12 Web III had done a similar analysis of the number</p> <p>13 of plays, correct?</p> <p>14 A. I cited it. I said he has the highest</p> <p>15 estimate I've ever seen, and I included that and</p> <p>16 did a calculation based on it.</p> <p>17 Q. And you mentioned that he did his</p> <p>18 analysis, likewise, of plays on Slacker, right?</p> <p>19 A. Yes -- well, he -- analysis is the</p> <p>20 wrong word. He -- he said he thought that's what</p> <p>21 it was, based on some evidence that he had seen in</p> <p>22 discovery.</p>
401	<p>1 the higher rate, correct?</p> <p>2 A. No. Actually, some of the calculations</p> <p>3 I did, the per-play rate came out higher. But</p> <p>4 they're all in the same ballpark. They're all in</p> <p>5 this range of 50 cents to a dollar per month.</p> <p>6 And so, you know, sometimes it's the</p> <p>7 per-play rate that's higher, sometimes it's the</p> <p>8 percentage rate that's higher. I never found a</p> <p>9 case where the minimum rate was the highest. They</p> <p>10 were always dominated by one of the others.</p> <p>11 But sometimes it was the per-play rate</p> <p>12 and sometimes it was the percentage rate. but they</p> <p>13 didn't differ by very much, you know, 10, 20 cents,</p> <p>14 something like that.</p> <p>15 Q. When you did that analysis, one of the</p> <p>16 things you needed to know was the number of plays</p> <p>17 per month, right?</p> <p>18 A. Yes.</p> <p>19 So you need an estimate of how many</p> <p>20 plays per month are and that -- and that -- most of</p> <p>21 that information came in discovery. The stuff that</p> <p>22 I had before discovery was -- was minimal, and then</p>	403	<p>1 Q. Okay. And he also did an analysis</p> <p>2 based on, I believe, Live365, correct?</p> <p>3 A. Well, he had some information about</p> <p>4 some sites at that time that he said were in that</p> <p>5 range -- in -- in the range of 500.</p> <p>6 One of the things that I noticed in the</p> <p>7 discovery documents is that the per-play rate has</p> <p>8 been declining over time, and I didn't know that</p> <p>9 until I saw the discovery documents.</p> <p>10 It's lower now than it was at the time</p> <p>11 that Michael looked at the data. He looked -- you</p> <p>12 know, his data were substantially older than the</p> <p>13 data that I looked at, and one of the things that's</p> <p>14 apparent is that the per-play rate covered by these</p> <p>15 licenses is declining over time.</p> <p>16 Q. Now, let's just assume for the sake of</p> <p>17 argument that Dr. Pelcovitz was right and the</p> <p>18 correct number of plays is 563 a month or something</p> <p>19 like that.</p> <p>20 All right?</p> <p>21 A. You're asking me to assume something I</p> <p>22 know to be false, because I've seen the Slacker</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

404	<p>1 numbers, the more recent Slacker numbers, and</p> <p>2 they're not consistent with that.</p> <p>3 Q. Well, I'm going to ask you to accept my</p> <p>4 assumption and we'll --</p> <p>5 A. Okay.</p> <p>6 Q. -- figure it out at some other time.</p> <p>7 But let's assume that. According to</p> <p>8 your testimony, I believe at Page 78, the agreement</p> <p>9 between Sony and Last.fm required Last to pay the</p> <p>10 higher of a percentage of revenue or the statutory</p> <p>11 rate plus .0025, correct?</p> <p>12 A. If you say -- what page are you on?</p> <p>13 Q. It was Page 78 of your testimony.</p> <p>14 Are you with me?</p> <p>15 A. Isn't this restricted?</p> <p>16 Q. I believe actually that part we did not</p> <p>17 restrict --</p> <p>18 A. Okay.</p> <p>19 Q. -- but thank you for pointing it out.</p> <p>20 A. That would be a coup if I told you it</p> <p>21 was restricted.</p> <p>22 MR. RICH: Yesterday, it was.</p>	406	<p>1 percentage of revenue that would control, it would</p> <p>2 be the per-play rate, right?</p> <p>3 A. That's what it says right here. The</p> <p>4 percentage rate produces a lower number than the</p> <p>5 Pelcovitz number right here (indicating).</p> <p>6 Q. And the number that you've got right</p> <p>7 here for Dr. Pelcovitz would actually go up,</p> <p>8 because the Web III rates are increasing over time,</p> <p>9 correct?</p> <p>10 A. I don't remember, without reading this</p> <p>11 again, what the timing is, so I can't answer</p> <p>12 without actually spending some time reading this</p> <p>13 and going through the calculation and looking at</p> <p>14 the data because I don't have the webcaster rates</p> <p>15 memorized by year, and I don't have the precise</p> <p>16 calculation I did here memorized. I'd have to look</p> <p>17 at it.</p> <p>18 Q. Okay. Just looking at this, it appears</p> <p>19 that you were using the statutory rate for 2008.</p> <p>20 Do you see that?</p> <p>21 A. Oh, the license -- the license calls</p> <p>22 for that, right. It calls for the CARP plus an</p>
405	<p>1 THE WITNESS: Okay.</p> <p>2 Where are you on this page?</p> <p>3 BY MR. HANDZO:</p> <p>4 Q. The middle of the page, roughly,</p> <p>5 Page 78.</p> <p>6 A. Okay.</p> <p>7 Q. Do you see the discussion of the Sony</p> <p>8 deal?</p> <p>9 A. Um-hum.</p> <p>10 (Whereupon, the witness reviews the</p> <p>11 document.)</p> <p>12 THE WITNESS: Yeah. That's -- so I did</p> <p>13 both calculations, both the one based on the actual</p> <p>14 plays and the one based on Michael's estimate, and</p> <p>15 the numbers or what you get for those are right</p> <p>16 there (indicating).</p> <p>17 BY MR. HANDZO:</p> <p>18 Q. Right.</p> <p>19 So if we were to take the statutory</p> <p>20 rate in 2013 or 2014, for example, under the Sony</p> <p>21 deal, if Dr. Pelcovitz is right about the number of</p> <p>22 plays rather than you, it wouldn't be the</p>	407	<p>1 add-on.</p> <p>2 So that's the ambiguity in this</p> <p>3 license. It refers to a rate that doesn't exist.</p> <p>4 And I made an interpretation of what they must've</p> <p>5 meant.</p> <p>6 I -- I -- I agree there's an ambiguity</p> <p>7 here as I expressed it, which is the license itself</p> <p>8 doesn't make sense, so I interpreted it as meaning</p> <p>9 the webcaster rate.</p> <p>10 Q. All right. Let's go to the next step</p> <p>11 of your analysis, which was to take the number that</p> <p>12 you calculated as sort of the royalty under the</p> <p>13 Last.fm agreement. You then used that to determine</p> <p>14 the revenue share for SiriusXM, correct?</p> <p>15 A. Yes.</p> <p>16 And that will be -- that will -- you're</p> <p>17 right; it will depend on what the per-play rate is</p> <p>18 and what the assumption you make about plays per</p> <p>19 month is per user.</p> <p>20 And there are various estimates of</p> <p>21 both, and they will get different numbers. And</p> <p>22 sometimes the per-play rate comes out to a higher</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

408	<p>1 royalty than the percentage rate, and sometimes it 2 comes out to a lower rate.</p> <p>3 Q. All right. But once you figure out 4 what the -- what the royalty rate is under the 5 Last.fm agreement, what you did was to divide it 6 into the revenue -- a -- an appropriate revenue 7 base for SiriusXM in order to get -- turn it into a 8 percentage of revenue; is that right?</p> <p>9 A. That's correct. Then the next stage is 10 you have to look at that rate as a fraction of some 11 revenue.</p> <p>12 Q. Right.</p> <p>13 And when you look at that rate as a 14 fraction of some revenue, you didn't look at it as 15 a fraction of -- well, let me back up.</p> <p>16 There was a step where you were trying 17 to determine what the consumer price would be for a 18 satellite music only service; is that correct?</p> <p>19 A. That's not what's going on here 20 (indicating). This is a separate -- this is -- 21 this is take -- when you take a per-play rate, 22 you're going to get a monthly royalty payment.</p>
410	<p>1 was another section of the report that calculated 2 rates where you needed to know that, yes.</p> <p>3 Q. Okay. And -- so that's what I want to 4 talk about for the moment --</p> <p>5 A. Okay.</p> <p>6 Q. -- okay?</p> <p>7 And you -- you made that calculation in 8 three ways; am I right?</p> <p>9 A. Actually, three generic categories of 10 ways, because within each one, there's a couple of 11 variants. But, yes.</p> <p>12 Q. Well, one of the ways that you decided 13 what the value of a music-only satellite service 14 was was to look at the consumer subscription price 15 for an Internet service, Internet webcasting 16 service, correct?</p> <p>17 A. That's one.</p> <p>18 Q. That's one?</p> <p>19 A. That's one generic category. How you 20 do that is -- then what the number you get is is 21 what you assume about what the right things to 22 compare it with are.</p>
409	<p>1 Then you divide that monthly royalty payment by the 2 average revenue per user, which is the total -- it 3 has no allocation of that revenue at all, it's just 4 a percentage rate of the gross revenues.</p> <p>5 So if -- like in this one in the 6 Pelcovitz case, if you take 93 cents and divide it 7 by \$11.38, you get some number which is about 8 8 point something percent.</p> <p>9 And that's the royalty rate on total 10 revenues you would get from that per-play rate. 11 You only have to worry about this percent -- about 12 how to break down the ARPU by the components of the 13 service.</p> <p>14 You only need to worry about that if 15 your starting place is a percentage rate. You 16 don't need to worry about that if your starting 17 point is a per-play rate.</p> <p>18 Q. Okay. In your analysis, you did go 19 through and figure out what you believed to be the 20 implied value of a satellite music only service, 21 correct?</p> <p>22 A. Yes, I did. That's a -- because there</p>
411	<p>1 Q. Right. And for that mode of the 2 analysis, the number that you used was the Pandora 3 subscription price, correct?</p> <p>4 A. Well, there's -- actually, Pandora and 5 several of its competitors that have -- services 6 the same features that I -- you know, if you 7 restrict the comparison to the services that have 8 the same basic characteristics as Pandora, then -- 9 and then you calculate what the prices are that are 10 paid by those, you -- then \$3 is the mobile price. 11 But not only does Pandora charge it, but so do 12 several others.</p> <p>13 And Pandora is the market leader, so if 14 you did the right way to create an average, which 15 is weight them by the number of subscribers, it 16 would still be a number around \$3, because Pandora 17 is so dominant.</p> <p>18 Q. Okay. You did not factor into that 19 analysis Live365, for example?</p> <p>20 A. No, because Live365 is a different kind 21 of service, and there are -- but -- but, yeah, you 22 could -- if you created a weighted average by</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

412	<p>1 market share, you would -- you would -- you could</p> <p>2 include 365, but the -- the more you include</p> <p>3 services that are not like Pandora, the less</p> <p>4 relevant the average is to what you're after.</p> <p>5 Q. The annual subscription price for</p> <p>6 Live365 is \$5.95 per month; is that right?</p> <p>7 A. Again, it has multiple services, so,</p> <p>8 yes, that's one service.</p> <p>9 Q. And that's for its noninteractive</p> <p>10 webcasting system, correct?</p> <p>11 A. For its premium noninteractive. It has</p> <p>12 several different prices for several different</p> <p>13 services, and that's the premium noninteractive</p> <p>14 subscription service.</p> <p>15 Q. And premium in this case meaning it's</p> <p>16 transmitted at a higher bit rate and there's no</p> <p>17 advertising?</p> <p>18 A. That's partly it, and I think there's</p> <p>19 access to more stuff, but I -- I'm -- doing this</p> <p>20 from memory is not a good idea. It's whatever</p> <p>21 Live -- Live365 is hard to deal with because it has</p> <p>22 an uncountable number of channels.</p>	414	<p>1 A. Again, I don't know that it has any</p> <p>2 customers at this subscription price.</p> <p>3 Q. Okay. Its subscription price is about</p> <p>4 \$4 per -- per month?</p> <p>5 A. Yes.</p> <p>6 Q. The second way you went about</p> <p>7 determining the implicit price of a music-only</p> <p>8 satellite service was to use information from</p> <p>9 Dr. Hauser's survey; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Let's just show you Dr. Hauser's</p> <p>12 survey. And I guess I'll mark it as an exhibit,</p> <p>13 although I anticipate it's going to come into</p> <p>14 evidence at some later point. But for now, I guess</p> <p>15 I'll just mark it, so we have a record, as</p> <p>16 SoundExchange Trial Exhibit Number 3.</p> <p>17 (SoundExchange Trial Exhibit Number 3</p> <p>18 was marked for identification</p> <p>19 purposes.)</p> <p>20 BY MR. HANDZO:</p> <p>21 Q. Dr. Noll, do you have SoundExchange</p> <p>22 Exhibit 3 in front of you?</p>
413	<p>1 And the difference between Pandora and</p> <p>2 Live365 is that the starting place -- the number of</p> <p>3 starting places in Pandora is relatively small.</p> <p>4 It's comparable to SiriusXM. But the -- but in</p> <p>5 Live365, I don't -- I can't determine. It's in the</p> <p>6 thousands of starting places.</p> <p>7 Q. In any event, you chose not to use the</p> <p>8 Live365 price in your data, correct?</p> <p>9 A. Right, because it has -- it's not</p> <p>10 comparable. A service that has thousands of</p> <p>11 channels is not comparable to one that has 135, 65</p> <p>12 of which are music.</p> <p>13 Q. You also did not use Sky.FM in your</p> <p>14 calculations?</p> <p>15 A. That's right. I couldn't find any data</p> <p>16 about this penetration. I don't know why -- I</p> <p>17 don't know whether it has any customers at the</p> <p>18 prices that it lists.</p> <p>19 Q. Do you recall that Sky.FM charges about</p> <p>20 \$4 per month for an annual subscription?</p> <p>21 A. For one of its services. yes.</p> <p>22 Q. You didn't use Musicoverly, correct?</p>	415	<p>1 A. I do.</p> <p>2 Q. Do you recognize that as Dr. Hauser's</p> <p>3 report?</p> <p>4 A. Well, it certainly looks like it.</p> <p>5 Q. You've seen it before?</p> <p>6 A. I've seen it before, and it looks like</p> <p>7 it.</p> <p>8 Q. Let me ask you to turn towards the end,</p> <p>9 to Exhibit G, just the last two or three pages from</p> <p>10 the end of the report.</p> <p>11 Are you with me?</p> <p>12 A. I'm there.</p> <p>13 Q. All right. So that's the summary of</p> <p>14 Dr. Hauser's survey, is it not?</p> <p>15 A. Yes.</p> <p>16 Q. And that's the information that you</p> <p>17 used for this part of your analysis, correct?</p> <p>18 A. I believe so, although what I actually</p> <p>19 used is whatever -- wherever he discusses it in his</p> <p>20 text as opposed to the table.</p> <p>21 Q. Well, let me -- keeping this in front</p> <p>22 of you, I'm asking -- I'm going to ask you to go</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

416	<p>1 back to Page 83 of your own report, which is where 2 you start to talk about the Hauser survey. 3 (Whereupon, the witness reviews the 4 document.) 5 THE WITNESS: Yes. 6 BY MR. HANDZO: 7 Q. Now, in your testimony, you say 8 Hauser's main result is that consumers would be 9 willing to pay 25.7 percent per month less than 10 they currently pay for a satellite radio service if 11 music channels were discontinued; is that right? 12 A. Yes. 13 Q. And if we sort of carry over, it looks 14 like you got that number using an applied value of 15 music on satellite radio of \$2.93? 16 A. Read the footnote. The footnote says, 17 starts with 3.24 and says that it's based upon an 18 inaccurate statement of average revenue per year. 19 So I just deflated it to reflect the average 20 revenue per year. 21 Q. The starting point, if I'm right, was 22 the 3.24 that we see in -- in Professor Hauser's</p>	418	<p>1 clear, in Dr. Hauser's survey, the way he was 2 getting to this number was he was asking people to 3 start from the subscription price they were 4 actually paying, which was around \$12.60 a month, 5 right? 6 A. Whatever they were currently paying. 7 And, of course, they had different numbers for what 8 they were currently paying. 9 Q. Right. And what you did was you took 10 the lower average revenue per user number; is that 11 right? 12 A. Well, I took what is the average 13 revenue per user number. That is the number. So 14 there's a difference between the mean in the survey 15 and the actual average, that's all. 16 JUDGE WISNIEWSKI: If I could clarify 17 that for myself here for a second, Dr. Noll. 18 When you're talking about the average 19 revenue per user, are you referring back to the 20 ARPU mentioned in Footnote 75 at Page 80? 21 THE WITNESS: Yes. 22 JUDGE WISNIEWSKI: I guess, then, the</p>
417	<p>1 testimony in Exhibit G, this line that says 2 overall, current levels of music? 3 A. That's correct. 4 Q. Okay. And you decided that that number 5 was incorrect and you lowered it, correct? 6 A. Well, I know what the average revenue 7 per user is, and it isn't the average payment per 8 user in the survey, okay? 9 So it would be a mistake to use the 10 survey result number as opposed to the actual 11 truthful number as what the revenue per user is. 12 So, I mean -- this is -- neither one of 13 us are making a mistake here. He asked his people, 14 you know, what they would be willing to pay and 15 what they were paying. And how much you're willing 16 to pay is a function of how much you are paying. 17 And the -- obviously, the sample users that he had 18 was slightly different than an average sample. 19 So that's why you have to make this 20 adjustment. 21 Q. All right. 22 Just so that I'm clear and we're all</p>	419	<p>1 question is, why doesn't that figure include 2 advertising revenues and purchase price 3 adjustments? 4 THE WITNESS: Because what the survey 5 is about is you say to a customer, how much are you 6 paying, not how much, you know, Sirius is paying. 7 And, obviously, they're not paying the advertising. 8 So, you know, it should be the case 9 that average revenue per user in the survey is 10 actually lower than the actual truthful average 11 revenue per user. 12 I didn't attempt to make that because I 13 was being conservative. But the -- the bottom line 14 to it is what the consumers pay should be less than 15 what the total revenue per user is of the company. 16 JUDGE WISNIEWSKI: Okay. And how 17 does -- and I understand what you mentioned with 18 respect to why you didn't include the average -- 19 the advertising revenues. But the purchase price 20 adjustments? If you could explicate that a little 21 bit. 22 THE WITNESS: What -- the -- by goal --</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">420</p> <p>1 yeah. The -- the story is the mean of the sample 2 is different, due to sampling error. And so the 3 question is, you've got a sample, and people are 4 giving you discounts they would insist upon off of 5 what they pay. 6 And then the question is, given that 7 the sample -- there is sampling error in what they 8 pay, how do you take into account that the entire 9 population has a different average payment than the 10 sample population. 11 And so I just adjusted it. I assumed 12 that the percentage discount would be the same, but 13 since, on average, consumers are paying less than 14 the survey people did, it would cause the -- the 15 value -- the discount they would require to be less 16 in order to keep the service if the music were 17 eliminated. 18 JUDGE WISNIEWSKI: Would that have 19 differed had you used a different end period? What 20 I'm thinking about here is the -- essentially the 21 surcharge that we were discussing yesterday that 22 SiriusXM had added for playing the music.</p>	<p style="text-align: right;">422</p> <p>1 BY MR. HANDZO: 2 Q. Okay. So as I understand the 3 difference between the number that Dr. Hauser was 4 using, the 12.60 or whatever the number came out to 5 be, and the number -- the ARPU number that you're 6 using, your justification for using the ARPU number 7 was that the ARPU is lower because there are some 8 number of people who have SiriusXM who aren't 9 paying for it because they may be on a trial 10 subscription or something like that, right? 11 A. Yeah, right. That's right, that's 12 right. And there are other -- there are lots of 13 reasons why the ARPU is different. That's only 14 one. 15 Q. And Dr. Hauser didn't -- Dr. Hauser's 16 survey didn't ask questions of any of those people 17 who weren't paying; he didn't survey those people? 18 A. Right; that's exactly right. 19 Q. So you're using Dr. Hauser's survey of 20 people who were paying to imply what people who 21 aren't paying would value music at, even though 22 Dr. Hauser didn't ask that, correct?</p>
<p style="text-align: right;">421</p> <p>1 THE WITNESS: I believe this includes 2 the service charge. 3 JUDGE WISNIEWSKI: I know, but it 4 apparently dropped at one point in time. 5 THE WITNESS: Yeah, it did drop it. 6 JUDGE WISNIEWSKI: The question is, 7 would it have been different if it would have been 8 done at a different point? 9 THE WITNESS: It probably would have 10 been slightly different. But the dropping of the 11 surcharge was fairly recently, and it was actually 12 rough -- as I recall, it was roughly simultaneously 13 when the survey was done, so that would have 14 been -- 15 JUDGE WISNIEWSKI: Leaving aside the 16 survey, that's not where you got this number, 17 though? 18 THE WITNESS: No, but the number is -- 19 is the corresponding period, and it does reflect 20 the dropping of the -- of the price, but only for a 21 fraction of the 2000 period covered. 22 JUDGE WISNIEWSKI: Thank you.</p>	<p style="text-align: right;">423</p> <p>1 A. Well, the -- those people aren't 2 generating any revenue, no matter what. They're 3 not generating any revenue for music, and they're 4 not generating any revenue for anything else. 5 So I guess I don't understand the 6 thrust of what you're after. It's the -- the issue 7 is if you're getting it for nothing, you don't need 8 a discount if the music disappears, because you're 9 still going to pay nothing. So the royalty rate is 10 calculated on the basis of the actual revenue in 11 the company. 12 It's not an imputed revenue for all the 13 people who are on the trial period. And so I think 14 this adjustment is appropriate, unless there were 15 to be a purely legal decision that somehow SiriusXM 16 should pay royalties on its -- during the trial 17 period as well. 18 And -- but since they don't, they pay 19 it as a percentage of their revenues, it is 20 appropriate to take that into account when 21 calculating what Dr. Hauser's results mean in terms 22 of the average value of music for all customers</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

424	<p>1 that are subscribing.</p> <p>2 Q. I guess my question is simply this:</p> <p>3 Dr. Hauser, we can all agree, did not ask people</p> <p>4 who weren't actually yet paying how they valued</p> <p>5 music, right?</p> <p>6 A. That's right, because the way the</p> <p>7 survey was structured, the answer would be zero.</p> <p>8 Q. Right.</p> <p>9 But you are applying his results, in</p> <p>10 effect, to all people who have SiriusXM, whether</p> <p>11 they're paying or not, right?</p> <p>12 A. That's correct.</p> <p>13 Q. So you're --</p> <p>14 A. It would be what is the average price</p> <p>15 per month to all of the users of just the music</p> <p>16 channels.</p> <p>17 Q. In any event --</p> <p>18 A. That would be the average -- well,</p> <p>19 there are other reasons it differs.</p> <p>20 But assume for the sake of argument</p> <p>21 that it was just that, the -- the average revenue</p> <p>22 would be 3.24 times the fraction that's actually</p>	426	<p>1 yes.</p> <p>2 Q. But that's reflected on this exhibit</p> <p>3 that we're looking at now, right?</p> <p>4 A. Yes.</p> <p>5 Q. And the value of freedom from</p> <p>6 commercials, according to Dr. Hauser, was \$2.46,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. So isn't it true that if we wanted to</p> <p>10 know the value of music offered without</p> <p>11 commercials, we'd have to add those two numbers?</p> <p>12 A. No, that's incorrect. If you -- if you</p> <p>13 wanted to say what's the value of music with</p> <p>14 commercials, you would subtract the 2.46 from the</p> <p>15 3.23 or 3.24 --</p> <p>16 Q. Okay.</p> <p>17 A. -- and that would be -- that would be</p> <p>18 the value of music with commercials.</p> <p>19 Q. Just looking at Dr. Hauser's results</p> <p>20 here --</p> <p>21 A. They're not additive, all right?</p> <p>22 Those -- those survey results are not additive.</p>
425	<p>1 paying, plus zero times the fraction that is not</p> <p>2 paying. And that's -- so that -- you could</p> <p>3 interpret the number that's in my report as that</p> <p>4 number.</p> <p>5 Q. Okay. And just so we're clear, the --</p> <p>6 the zero for the people who are not paying doesn't</p> <p>7 reflect what -- anything we know about their value</p> <p>8 of music, it just reflects the fact that at this</p> <p>9 point, they're not paying?</p> <p>10 A. It's the price -- this is an attempt to</p> <p>11 get at the price they pay.</p> <p>12 Q. Okay. Now, that 3.24 number that you</p> <p>13 then adjusted reflected, according to Dr. Hauser,</p> <p>14 the value of current levels of music, correct?</p> <p>15 A. Yeah, that's what the point of the</p> <p>16 survey was. It was -- it was -- it was relating --</p> <p>17 it was what the price would -- it's what -- how the</p> <p>18 price would have to fall to retain those customers.</p> <p>19 That was -- that's what the question was.</p> <p>20 Q. Now, Dr. Hauser also asked Respondents</p> <p>21 to value freedom from commercials, correct?</p> <p>22 A. Yeah. He asked a lot of other things.</p>	427	<p>1 That was the premise of your question, and they're</p> <p>2 not additive.</p> <p>3 Q. And when you say they are not additive,</p> <p>4 do I understand you to mean that the value of music</p> <p>5 number is influenced by the presence or absence of</p> <p>6 commercials, and the freedom from commercial number</p> <p>7 is influenced by the fact that it's -- there's</p> <p>8 music involved?</p> <p>9 A. The freedom from music question is</p> <p>10 about take the service as it currently exists and</p> <p>11 eliminate it. Then there's another in-principle</p> <p>12 question you could ask, which is take the service</p> <p>13 as it currently exists and add advertising.</p> <p>14 And the value of that service would be</p> <p>15 the value of the music minus the -- the value of</p> <p>16 freedom from advertising.</p> <p>17 Q. It's probably because I've now been</p> <p>18 standing up here too long, but I'm having a little</p> <p>19 trouble following, so let me try again.</p> <p>20 Having read Dr. Hauser's report, are</p> <p>21 you at least generally familiar with how he</p> <p>22 approached this?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

428	<p>1 A. I am generally familiar with it, but 2 I'm not a survey expert. So I'm not the right 3 person to ask about whether -- you know, the -- the 4 nitties and the gritties of the survey. 5 Q. All right. You're aware that for some 6 survey respondents, they would have been asked 7 first how much would you pay if there were no 8 commercials -- I'm sorry, if there were 9 commercials? 10 A. That's correct -- 11 Q. Okay. 12 A. -- and the numbers you get do depend on 13 sequencing. 14 Q. Okay. And then some people would have 15 been asked, after that question, what would you 16 pay -- what would you value the service at if it 17 didn't have music, right? 18 A. That's correct. 19 Q. All right. And so the people who are 20 being asked in that sequence are -- are looking at 21 the music as though it has commercials, right? 22 A. Right. You're -- yeah, you're -- what</p>	430	<p>1 right, they are interdependent? 2 A. Well, yes and no. Yes, they are, in a 3 sense, interdependent, because the value of -- 4 again, the value of a really, really, really pretty 5 left fender depends on whether the rest of the car 6 is pretty. 7 If that's what you mean by independent, 8 that's true. 9 Q. So, for example, if we look at the 10 first three columns in Dr. Hauser's chart here, 11 ubiquity of station availability, premium sound 12 quality and freedom from commercials, you would 13 agree with me that you could not expect to get 14 \$1.97, plus \$1.20, plus \$2.46 for a service that 15 offered ubiquitous premium quality, dead silence, 16 without commercials? 17 A. If there were no program content on 18 SiriusXM, its value would be zero. Likewise, if 19 there were music being piped out of a satellite 20 earth station by SiriusXM, but there were no 21 satellites and no radios, that would also be 22 useless and valueless.</p>
429	<p>1 you're saying is this -- this is a well-known fact 2 of -- of -- it's derived from -- a real problem in 3 economics is when you change two things 4 simultaneously, the allocation of the effect of 5 that depends upon which question you ask first. 6 All right? 7 So if -- you know, to get it out of the 8 context of this case, if we were trying to 9 decompose all the components of an automobile as to 10 what do you -- what do you like about the styling 11 of this automobile, we'll ask about the fenders and 12 then the hood and then the -- the interior and all 13 that and -- you know, obviously, at the end of the 14 game, you get a total amount for styling, but the 15 amount that gets assigned to the components will 16 depend upon the sequence in which you ask the 17 question. 18 Is that the question you were trying to 19 ask? 20 Q. Well, maybe. 21 But maybe here's the real question: 22 These are not, sort of, independent variables,</p>	431	<p>1 That this is the -- this is the 2 fundamental problem with disaggregation, that 3 the -- that when you go to extremes, every single 4 component of SiriusXM's system is valueless, 5 because its value would be nonexistent without the 6 presence of all the other components. 7 CHIEF JUDGE BARNETT: I think we're 8 going to take our noon recess. It's a little bit 9 early, but we will reconvene at 1:00. 10 MR. HANDZO: Sure. 11 (Whereupon, at 11:56 a.m., 12 a luncheon recess was taken.) 13 14 15 16 17 18 19 20 21 22</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

432	<p>1 AFTERNOON SESSION</p> <p>2 (1:03 p.m.)</p> <p>3 WHEREUPON,</p> <p>4 ROGER G. NOLL</p> <p>5 was called for continued examination, and having been</p> <p>6 previously duly sworn, was examined and testified as</p> <p>7 follows:</p> <p>8 CHIEF JUDGE BARNETT: Good afternoon.</p> <p>9 Please be seated.</p> <p>10 MR. HANDZO: May I proceed?</p> <p>11 CHIEF JUDGE BARNETT: You may.</p> <p>12 MR. HANDZO: Thank you.</p> <p>13</p> <p>14 CROSS-EXAMINATION (RESUMED)</p> <p>15</p> <p>16 BY MR. HANDZO:</p> <p>17 Q. Good afternoon, Dr. Noll.</p> <p>18 A. Good afternoon.</p> <p>19 JUDGE WISNIEWSKI: Actually,</p> <p>20 Mr. Handzo, if you could hold on one second.</p> <p>21 MR. HANDZO: Sure.</p> <p>22 JUDGE WISNIEWSKI: It would be helpful</p>	434	<p>1 (Whereupon, the witness reviews the</p> <p>2 document.)</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MR. HANDZO:</p> <p>5 Q. You've got an amount there for OEM</p> <p>6 revenue share, and I see that it's shaded.</p> <p>7 MR. HANDZO: So I'm assuming we've</p> <p>8 treated it as restricted?</p> <p>9 MR. RICH: Please.</p> <p>10 BY MR. HANDZO:</p> <p>11 Q. So I won't ask the number --</p> <p>12 A. Okay.</p> <p>13 Q. -- but you see the line that I'm</p> <p>14 referring to?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Can you tell me what that</p> <p>17 category of costs is?</p> <p>18 A. Well, the -- as you see, the OEMs</p> <p>19 appear several times in this table (indicating),</p> <p>20 and this is the -- the -- this reflects the</p> <p>21 relationship between SiriusXM and the automobile</p> <p>22 manufacturers, what they have to compensate them to</p>
433	<p>1 if I could see something that I'm reading.</p> <p>2 (Pause.)</p> <p>3 JUDGE WISNIEWSKI: Thank you.</p> <p>4 BY MR. HANDZO:</p> <p>5 Q. All right. Dr. Noll, the third way</p> <p>6 that you sort of approached trying to figure out</p> <p>7 the implicit price of a music-only satellite</p> <p>8 service was, I believe, to calculate the costs of</p> <p>9 the inputs for a satellite service that are</p> <p>10 necessary for a satellite delivery.</p> <p>11 Did I summarize that?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. And the costs that you used for</p> <p>14 that purpose are summarized in your Table 3, right?</p> <p>15 A. That's correct.</p> <p>16 Q. One of those costs you described as OEM</p> <p>17 revenue share. And take a minute if you want to</p> <p>18 find that in your testimony.</p> <p>19 A. Whoops, wrong one.</p> <p>20 Which table was it, by the way?</p> <p>21 Q. It was Table 3.</p> <p>22 A. Table 3, okay.</p>	435	<p>1 put the radios in the cars and market the radios to</p> <p>2 the people who buy cars.</p> <p>3 Q. All right. So am I right that this</p> <p>4 doesn't relate to the cost of creating the</p> <p>5 receivers; this is the cost of getting the</p> <p>6 carmakers to put the receivers in the dashboards?</p> <p>7 A. Yeah, this is -- this is a form of</p> <p>8 investment that you must make in order to get a</p> <p>9 customer.</p> <p>10 Q. Okay. But I'm not sure that answered</p> <p>11 my question.</p> <p>12 This number is not the amount of money</p> <p>13 it cost to build those receivers, right?</p> <p>14 A. It's not physical capital, but it is a</p> <p>15 capital investment. It's -- yeah, it's not -- it's</p> <p>16 not a satellite and it's not a physical product,</p> <p>17 but it is a payment to -- that is an investment in</p> <p>18 acquiring a customer.</p> <p>19 Q. Right. So what this number reflects is</p> <p>20 that in order to persuade carmakers to put the</p> <p>21 receivers in a car, SiriusXM agrees to share with</p> <p>22 them a portion of revenue, correct?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

436	<p>1 A. Well, there's -- there's a share</p> <p>2 portion and then there's a payment portion, yes.</p> <p>3 Q. Okay. Now, SiriusXM conceivably could</p> <p>4 get its receivers into the market other ways,</p> <p>5 right, other than by paying carmakers to put them</p> <p>6 in the dashboard?</p> <p>7 A. Well, historically, it didn't. They</p> <p>8 dealt with -- this wasn't the first method. The</p> <p>9 first method was trying to retrofit to replace</p> <p>10 radios with radios that were capable of receiving</p> <p>11 satellite signals.</p> <p>12 Q. I'm sorry, Dr. Noll. I was just having</p> <p>13 a little trouble hearing you there.</p> <p>14 A. Oh, I'm sorry.</p> <p>15 The original marketing plan, the</p> <p>16 original plan that they followed was retrofitting</p> <p>17 radios in cars so that you -- the customer would go</p> <p>18 to some shop and buy a radio and have it installed</p> <p>19 that was capable of receiving satellite signals.</p> <p>20 Q. Okay. You could also get these</p> <p>21 receivers into the market by just selling them at</p> <p>22 sort of aftermarket auto stores, right?</p>	438	<p>1 payment and then you get a stream of revenues. And</p> <p>2 that's why, as an economic matter, it's a form of</p> <p>3 investment.</p> <p>4 Q. Okay. And we can agree, can't we, that</p> <p>5 webcasters probably also spend money to acquire</p> <p>6 subscribers?</p> <p>7 A. Not like this.</p> <p>8 Q. But they do spend money?</p> <p>9 A. Well, yes, but it's nothing like this.</p> <p>10 I mean, there's -- there's no counterpart like</p> <p>11 this.</p> <p>12 Q. What you're saying is that, in effect,</p> <p>13 SiriusXM spends more than the webcasters?</p> <p>14 A. SiriusXM has to spend more because it</p> <p>15 has to overcome this cost of acquiring customers</p> <p>16 and putting a distribution network in place.</p> <p>17 Some of this repayment to -- some of</p> <p>18 this payment to automobile manufacturers is, in</p> <p>19 fact, a kind of cost that is sort of unique to the</p> <p>20 fact that you have a SiriusXM Radio which has to be</p> <p>21 a very powerful device that is more expensive than</p> <p>22 is put into the car.</p>
437	<p>1 A. That's what I just sort of got through</p> <p>2 saying.</p> <p>3 Q. Okay. So the fact that SiriusXM has</p> <p>4 made a decision that it is going to pay carmakers</p> <p>5 to install existing receivers into cars, that's</p> <p>6 something that you regard as a necessary cost of a</p> <p>7 satellite delivery service?</p> <p>8 A. Well, this is the most cost-effective</p> <p>9 way (indicating) to get customers for satellite</p> <p>10 radio service that the -- the alternative approach</p> <p>11 is more costly, it has a lower hit rate.</p> <p>12 So this -- the reason they do it this</p> <p>13 way is because this is the most cost-effective way</p> <p>14 to acquire subscribers.</p> <p>15 Q. In other words, it is a cost of</p> <p>16 acquiring subscribers, is it not?</p> <p>17 A. Yes. It's an investment you must make</p> <p>18 in order to get someone who is going to subscribe</p> <p>19 to your service. And then you have a certain</p> <p>20 period and certain number of years that that person</p> <p>21 is expected to continue to be a subscriber.</p> <p>22 So you -- you make this up-front</p>	439	<p>1 Q. Now, the -- the costs of actually</p> <p>2 building that radio receiver, are those reflected</p> <p>3 in your Table 3?</p> <p>4 A. Yeah. They occur in these -- in some</p> <p>5 of these other items (indicating), yes.</p> <p>6 Q. Which other items? Do you recall?</p> <p>7 A. I can't remember sitting here what the</p> <p>8 definitions of each of these is, but it is -- I</p> <p>9 can't remember which of these ones that have OEM in</p> <p>10 it, but it's in one of those.</p> <p>11 Q. Okay. Now, it's not uncommon for</p> <p>12 businesses to have revenue-sharing provisions with</p> <p>13 their business partners, correct?</p> <p>14 A. You mean with their distributors and</p> <p>15 dealers?</p> <p>16 Q. Sure.</p> <p>17 A. It's not uncommon to have deals whereby</p> <p>18 they get compensated based on your revenues, yes.</p> <p>19 Q. And -- and you would agree, wouldn't</p> <p>20 you, that webcasters, for example, if they're</p> <p>21 ad-supported services, usually have a</p> <p>22 revenue-sharing provision with the ad networks that</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

440	<p>1 provide them the ads, right?</p> <p>2 A. Well, they pay commissions, yes, to</p> <p>3 obtain advertising.</p> <p>4 Q. The line in Table 3 that says</p> <p>5 Subscriber acquisition costs.</p> <p>6 Do you see that?</p> <p>7 A. Yes. Hardware costs is there, it is.</p> <p>8 Q. That was my question.</p> <p>9 Do you know what's in that category</p> <p>10 beyond what your note says?</p> <p>11 A. I don't know what the note says. I</p> <p>12 don't see the note.</p> <p>13 Q. Well, do you see there's a section of</p> <p>14 your table that says Notes? The same page.</p> <p>15 A. Oh, yeah, yeah, okay.</p> <p>16 I'm sorry. Yes. I thought you meant</p> <p>17 footnotes.</p> <p>18 Yes, my recollection is that is, in</p> <p>19 fact, where the -- the devices are, yes.</p> <p>20 Q. Do you know what else is in that</p> <p>21 number, what other categories?</p> <p>22 A. I can't -- sitting here, I don't</p>	442	<p>1 A. And in -- and in -- to some degree, in</p> <p>2 the hardware number as well.</p> <p>3 Q. But in any event, all of those payments</p> <p>4 are payments to induce --</p> <p>5 A. Some are to OEMs, and some are</p> <p>6 subsidies to the hardware manufacturer.</p> <p>7 Q. And all of them are subsidies or</p> <p>8 payments intended to get the radio receiver into</p> <p>9 the car?</p> <p>10 A. Yeah. This is the -- yeah, exactly,</p> <p>11 it's to have radios installed in cars. These are</p> <p>12 all referring to getting radios installed in cars.</p> <p>13 Well, it's that plus, once they're</p> <p>14 installed in cars, trying to get consumers to</p> <p>15 subscribe. Because getting in the car isn't</p> <p>16 enough, because only 45 percent subscribe.</p> <p>17 So you have another set of costs that</p> <p>18 are associated with convincing them that the radio</p> <p>19 ought to be used for something other than just</p> <p>20 listening to terrestrial radio.</p> <p>21 Q. And those costs include what? Do you</p> <p>22 know?</p>
441	<p>1 remember what's in there. We went over this in</p> <p>2 detail, but it happened so long ago I don't</p> <p>3 remember precisely what's in it.</p> <p>4 Q. And then the marketing and sales</p> <p>5 number, other than what appears in your note, can</p> <p>6 you tell me what that is made up of?</p> <p>7 A. Yeah. This is the subset of the</p> <p>8 marketing costs associated with selling the</p> <p>9 service, whether it's in the way you described</p> <p>10 earlier, which is do it through some sort of auto</p> <p>11 parts company as a retrofit, or whether you do it</p> <p>12 through OEMs.</p> <p>13 There's other marketing costs they</p> <p>14 have. For example, they have an ordinary PC-based</p> <p>15 Internet service, and it doesn't include those.</p> <p>16 Q. All right. I'm going to take a wild</p> <p>17 guess here.</p> <p>18 Just reading the notes, does it sound</p> <p>19 right that the OEM revenue share number is strictly</p> <p>20 revenue share and, to the extent that payments are</p> <p>21 made that aren't revenue sharing to OEMs, that</p> <p>22 would appear in the marketing and sales number?</p>	443	<p>1 A. Marketing costs to -- to -- sort of</p> <p>2 direct marketing costs of SiriusXM, plus the</p> <p>3 payments they make to OEMs to engage in marketing.</p> <p>4 Q. So, for example, would advertising to</p> <p>5 get consumers to sign up for the service be</p> <p>6 included in that number?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Dr. Noll, let me -- I'm going to</p> <p>9 ask you a few questions about your -- your</p> <p>10 testimony about promotion or substitution, which I</p> <p>11 think, in your written testimony, starts around</p> <p>12 Page 20.</p> <p>13 A. Okay. I'm there.</p> <p>14 Q. And there, you cite a study by the NPD</p> <p>15 Group for the proposition that satellite radio is</p> <p>16 promotional, correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Let's -- I want to take a</p> <p>19 look at that, so let's take a minute. We're going</p> <p>20 to mark that as our next exhibit.</p> <p>21 A. Okay.</p> <p>22 (SoundExchange Trial Exhibit Number 4</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

444	<p>1 was marked for identification</p> <p>2 purposes.)</p> <p>3 BY MR. HANDZO:</p> <p>4 Q. Dr. Noll, we're showing you what we've</p> <p>5 marked as SoundExchange Trial Exhibit Number 4.</p> <p>6 Does that appear to be the NPD survey</p> <p>7 that you were talking about in your testimony?</p> <p>8 A. Yes, although mine isn't colored. Mine</p> <p>9 isn't as pretty as this. I just have a</p> <p>10 black-and-white version.</p> <p>11 Q. Other than the color, it's what you</p> <p>12 relied on?</p> <p>13 A. Yeah. I didn't rely on the color.</p> <p>14 Q. We can agree the color doesn't change</p> <p>15 the conclusions?</p> <p>16 A. It makes the charts easier to read.</p> <p>17 Q. Well, then thank you for that lead-in.</p> <p>18 Let's read the chart.</p> <p>19 Can you turn to Page 30, please?</p> <p>20 A. Yes.</p> <p>21 Q. And, again, Page 30 is the page that</p> <p>22 you were, in particular, relying on for your</p>	446	<p>1 satellite radio, right?</p> <p>2 A. Correct.</p> <p>3 Q. And we've got 15 percent who are a</p> <p>4 little less or a lot less?</p> <p>5 A. That's correct.</p> <p>6 Q. But then, if we look at the people who</p> <p>7 are a lot more likely to buy music, that's</p> <p>8 3 percent, right?</p> <p>9 A. Yeah. If we know what that means.</p> <p>10 Q. Right. When we look at the people who</p> <p>11 are likely to buy a lot less, it's 11 percent,</p> <p>12 right?</p> <p>13 A. Yeah.</p> <p>14 Q. So looking at this, you can't really</p> <p>15 tell whether the respondents to this survey were</p> <p>16 going to buy, net, more music or less music as a</p> <p>17 result of listening to satellite radio?</p> <p>18 A. The -- the people who did this are the</p> <p>19 ones who know what the data behind this are, and</p> <p>20 they characterize what the overall results were.</p> <p>21 And the characterization of was it on balance, it</p> <p>22 means you buy more.</p>
445	<p>1 conclusions, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Now, there's a line down towards</p> <p>4 the bottom that says, Purchasing music overall.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And the question that was asked that</p> <p>8 elicited these responses was -- appears up at the</p> <p>9 top. Has your usages of satellite radio influenced</p> <p>10 you to do any of the following: a lot more, a</p> <p>11 little more, the same, a little less or a lot less?</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. So that question was asked about</p> <p>15 purchasing music overall, right?</p> <p>16 A. Yes, it was. And there was -- there</p> <p>17 was, basically, do you buy more, do you buy less.</p> <p>18 do you buy the same.</p> <p>19 Q. If you look at the result for</p> <p>20 purchasing music overall, we've got 22 percent who</p> <p>21 are a little more likely or a lot more likely to</p> <p>22 buy more music as a result of listening to</p>	447	<p>1 And I -- since neither you nor I know</p> <p>2 what -- what a lot or a little less means -- or,</p> <p>3 you know, a lot or a little means, it would be</p> <p>4 inappropriate to assign any meaning to that at all.</p> <p>5 Because it's -- first of all, it's</p> <p>6 qualitative, not quantitative, and you don't know</p> <p>7 what the baseline is. And people saying a little</p> <p>8 less or a lot less, or a little more or a lot more</p> <p>9 could differ in their mean purchases to begin with.</p> <p>10 So it's just not -- it's -- you can't</p> <p>11 derive any meaningful statement other than more</p> <p>12 people say they buy more than say they buy less.</p> <p>13 And the overall characterization of the study by</p> <p>14 the people who did it is that they interpret it to</p> <p>15 mean people buy more.</p> <p>16 Q. But just looking at the numbers they</p> <p>17 report, we can't tell whether people buy more or</p> <p>18 buy less, right?</p> <p>19 A. Yeah, but they -- they also say this</p> <p>20 translates to more music buys, particularly digital</p> <p>21 downloads. That's all we know is -- because</p> <p>22 they're the ones who have the data, not us. And</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

448	<p>1 they say, On balance, taking --</p> <p>2 JUDGE ROBERTS: Where were you reading</p> <p>3 that from?</p> <p>4 THE WITNESS: The very top. The title</p> <p>5 of the -- of the figure says, Consumers report that</p> <p>6 this translates to more music buys, particularly</p> <p>7 digital downloads. This is the people who did the</p> <p>8 study and have the numbers characterizing what the</p> <p>9 results are.</p> <p>10 BY MR. HANDZO:</p> <p>11 Q. Now, in the same section of your</p> <p>12 report, I believe starting at Page 22, you say that</p> <p>13 on-demand services are substitutional, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you cite a study by NPD and NARM?</p> <p>16 A. Yes.</p> <p>17 Q. And what you actually cite in your</p> <p>18 study -- sorry -- what you actually cite in your</p> <p>19 report is a Digital Music News article about that</p> <p>20 study?</p> <p>21 A. A characterization of that study, yes.</p> <p>22 Q. Right. You didn't actually look at the</p>
450	<p>1 effect, I wouldn't have said it was ambiguous.</p> <p>2 You get some positives, some negatives</p> <p>3 and some no effects, and that's what I meant by</p> <p>4 "ambiguous."</p> <p>5 Q. Well, for example, you mention a couple</p> <p>6 of Universal Music surveys, right -- or studies?</p> <p>7 A. The Universal, yes, those were a -- a</p> <p>8 specific product, I believe -- there was -- the</p> <p>9 Universal study is about some specific albums, as I</p> <p>10 remember.</p> <p>11 Q. I don't want to make this a memory</p> <p>12 test. Let me show you one of them.</p> <p>13 (SoundExchange Trial Exhibit Number 5</p> <p>14 was marked for identification</p> <p>15 purposes.)</p> <p>16 BY MR. HANDZO:</p> <p>17 Q. Okay. Dr. Noll, this exhibit is one of</p> <p>18 the record company studies you were referring to</p> <p>19 earlier?</p> <p>20 A. This one isn't the one about the</p> <p>21 individual releases. This is the one about the</p> <p>22 immediate effect of the introduction of Spotify in</p>
449	<p>1 NARM survey instrument or the underlying data.</p> <p>2 right?</p> <p>3 A. I didn't -- I didn't have it at the</p> <p>4 time I wrote it. I have subsequently had it. And</p> <p>5 I remember having looked at it, but I -- I -- but I</p> <p>6 didn't see it at the time I wrote this.</p> <p>7 Q. And by the way, you say in -- in your</p> <p>8 testimony that study specifically mentions Spotify.</p> <p>9 The study itself didn't it, did it?</p> <p>10 A. I thought it did, but maybe it was just</p> <p>11 the article that characterized it that mentioned</p> <p>12 it.</p> <p>13 Q. Okay. You mention also certain record</p> <p>14 company studies that you say produce ambiguous</p> <p>15 results?</p> <p>16 A. That's correct.</p> <p>17 Q. Some of those studies, in fact, were</p> <p>18 not at all ambiguous, correct?</p> <p>19 A. Well, what I mean by "ambiguous" is</p> <p>20 you've got conflicting results. That's what I</p> <p>21 mean -- that's what ambiguous means, that --</p> <p>22 that -- if the studies had come out, there's no</p>
451	<p>1 a handful of European countries.</p> <p>2 Q. And we can agree that the conclusion of</p> <p>3 this study at least was not ambiguous?</p> <p>4 A. It was -- basically, it's there's no</p> <p>5 effect in the short run. Although, again, it</p> <p>6 differs by country what -- the actual curves,</p> <p>7 sometimes they go a little up, sometimes they go a</p> <p>8 little down.</p> <p>9 The overall -- the conclusion is there</p> <p>10 isn't really an effect.</p> <p>11 Q. Now, on Page 22 of your testimony, you</p> <p>12 say that the likely substitutional effect of</p> <p>13 on-demand services caused some top selling artists</p> <p>14 to refuse to allow their new releases to be offered</p> <p>15 on those services?</p> <p>16 A. That's correct.</p> <p>17 Q. And you referred to Coldplay and</p> <p>18 Lady Gaga?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. Specifically in connection with</p> <p>21 Spotify; is that right?</p> <p>22 A. I don't see that the sentence refers to</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

452	<p>1 Spotify.</p> <p>2 Where do you see Spotify?</p> <p>3 Q. Well, Spotify is one of the on-demand</p> <p>4 services, is it not?</p> <p>5 A. Oh, yes, Spotify -- yeah. I don't -- I</p> <p>6 didn't refer to Spotify here, but, yes, Spotify is</p> <p>7 an on-demand service.</p> <p>8 Q. And you're aware, are you not, that for</p> <p>9 Coldplay and Lady Gaga, their newest releases are</p> <p>10 on Spotify now?</p> <p>11 A. On now is right, but what Coldplay did</p> <p>12 is refuse to release on on-demand for three months</p> <p>13 after their latest album was released. It was</p> <p>14 released in October of 2011, and it wasn't on</p> <p>15 on-demand services until February of 2012. And by</p> <p>16 that time, the record sold over a million copies.</p> <p>17 So that's what I mean by -- it's not</p> <p>18 that they say our music can't be on the site. It's</p> <p>19 during -- they're adopting a strategy sort of like</p> <p>20 Hollywood with regard to movies; they're having</p> <p>21 release windows. And some artists are demanding</p> <p>22 release windows, which is that you -- that the CD</p>
453	<p>1 and the -- the iTunes digital download has to have</p> <p>2 a window of time when it's exclusive.</p> <p>3 Q. And windowing, as I think you just</p> <p>4 suggested, is a common way of -- of selling lots of</p> <p>5 things, right? Music, movies, so on?</p> <p>6 A. Well, it's -- it's something, yes.</p> <p>7 that's been extensively studied. It's a way to</p> <p>8 avert self-competition. And it only happens when</p> <p>9 you believe there's a competitive substitution</p> <p>10 effect going on between two different releases --</p> <p>11 pathways.</p> <p>12 Q. Do you know when Lady Gaga's new</p> <p>13 release first appeared on Spotify?</p> <p>14 A. That favors me, but not for a good</p> <p>15 reason. That was released in May of 2011, and</p> <p>16 Spotify U.S. didn't come into existence until July</p> <p>17 of 2011. So there was a delay.</p> <p>18 However, what Lady Gaga does is a</p> <p>19 little different. She sells exclusive rights to</p> <p>20 releases. Like when -- when Born This Way was</p> <p>21 originally released, a few days beforehand, you</p> <p>22 could get access to the tracks that had not been</p>
454	<p>1 released as singles only over Zynga.</p> <p>2 Zynga is the -- is the interactive</p> <p>3 Web site that has FarmVille, and one of the</p> <p>4 components of FarmVille is something -- I know</p> <p>5 you'll love this -- is GagaVille. And if you're a</p> <p>6 Gaga Monster, you get to go onto GagaVille and</p> <p>7 listen to the songs before they were released.</p> <p>8 And, of course, that's because she has</p> <p>9 an exclusive deal with Zynga, or else they wouldn't</p> <p>10 have GagaVille.</p> <p>11 So, yeah, I mean -- then, in Europe,</p> <p>12 she had exclusive contracts with, actually, the</p> <p>13 Spotify on-demand services that were already in</p> <p>14 Europe. So they were the only on-demand service</p> <p>15 for a while that had Born This Way.</p> <p>16 Q. So, in other words, one of the things</p> <p>17 you can do with windowing is you can sell exclusive</p> <p>18 rights?</p> <p>19 A. Yes. What do you is, in response to</p> <p>20 the possibility of substitution -- there's two ways</p> <p>21 you can deal with it: the first is windowing; the</p> <p>22 second is you can sell -- you can auction an</p>
455	<p>1 exclusive right to be simultaneous, but you get</p> <p>2 extra money to compensate you for the substitution.</p> <p>3 Q. This might be my last question,</p> <p>4 Dr. Noll.</p> <p>5 A. Oh, good. You have a bunch of people</p> <p>6 here.</p> <p>7 Q. I was going to say you're not the only</p> <p>8 person with that reaction.</p> <p>9 As I understand it, Dr. Noll, you are</p> <p>10 not offering an opinion about disruption; is that</p> <p>11 correct?</p> <p>12 A. That's correct, I have not done a</p> <p>13 systematic, thorough analysis of disruption.</p> <p>14 MR. HANDZO: Thank you.</p> <p>15 Can I have the Court's indulgence for</p> <p>16 one moment?</p> <p>17 CHIEF JUDGE BARNETT: Certainly.</p> <p>18 (Pause.)</p> <p>19 MR. HANDZO: Thank you, Dr. Noll. That</p> <p>20 was, in fact, my last question.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 CHIEF JUDGE BARNETT: Redirect,</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

456	<p>1 Mr. Rich?</p> <p>2 MR. RICH: A few on redirect.</p> <p>3 CHIEF JUDGE BARNETT: Mr. Rich, just a</p> <p>4 moment.</p> <p>5 Mr. Fakler, did you have any questions</p> <p>6 for this witness?</p> <p>7 MR. FAKLER: No, Your Honor. Thank</p> <p>8 you.</p> <p>9 CHIEF JUDGE BARNETT: Now, you may</p> <p>10 redirect.</p> <p>11</p> <p>12 REDIRECT EXAMINATION</p> <p>13</p> <p>14 BY MR. RICH:</p> <p>15 Q. Just a few areas of redirect, Dr. Noll.</p> <p>16 I'll let you get on your way subject to any</p> <p>17 remaining questions from the Judges.</p> <p>18 In the prior satellite radio</p> <p>19 proceeding, to your knowledge, was there any</p> <p>20 evidence as to the rates negotiated by this buyer,</p> <p>21 meaning SiriusXM, and any individual record</p> <p>22 companies over the rights that are involved in this</p>	458	<p>1 companies involving somewhat distinct copyright</p> <p>2 rights; is that correct?</p> <p>3 A. Yes, there were a whole bunch of</p> <p>4 benchmarks proposed, all of which had the property</p> <p>5 they were very different from satellite radio.</p> <p>6 Q. Now, coming to the present proceeding</p> <p>7 and based, again, on your awareness of the record</p> <p>8 and of discovery materials and what's contained in</p> <p>9 your written direct testimony and that of other</p> <p>10 witnesses, what is your understanding as to the</p> <p>11 reaction that was elicited out of SoundExchange to</p> <p>12 the prospect that there would be evidence adduced</p> <p>13 in this courtroom as to SiriusXM's direct licensing</p> <p>14 experience? What is your understanding of the</p> <p>15 record evidence as to that?</p> <p>16 MR. HANDZO: I'm just going to object.</p> <p>17 I don't think that's something I cross-examined on,</p> <p>18 so it seems to be beyond the scope of cross.</p> <p>19 MR. RICH: Your Honors, this is</p> <p>20 completely going to the half an hour of examination</p> <p>21 on all of the outlying characteristics of the</p> <p>22 direct licensing evidence and why it would be</p>
457	<p>1 proceeding?</p> <p>2 A. No.</p> <p>3 Q. So I take it there was no evidence --</p> <p>4 am I correct that to your knowledge, there was no</p> <p>5 evidence reflecting the prices arising out of</p> <p>6 transactions in which individual record companies</p> <p>7 competed for increased play of their sound</p> <p>8 recordings on SiriusXM at that time?</p> <p>9 A. Yeah; there were no such agreements.</p> <p>10 Q. Or in the parlance of your written</p> <p>11 direct testimony, there was no evidence of</p> <p>12 transactions reflecting demand diversion between</p> <p>13 and among individual record companies, correct?</p> <p>14 A. Yes; there was no transaction</p> <p>15 reflecting that or anything else that goes into a</p> <p>16 willing buyer/willing seller transactions. There</p> <p>17 were no -- there were literally no willing</p> <p>18 buyer/willing seller transactions.</p> <p>19 Q. And instead, the parties reverted to</p> <p>20 various benchmarks looking at third-party</p> <p>21 transactions, meaning transactions between and</p> <p>22 among different buyers and individual record</p>	459	<p>1 rational for all of the reasons Mr. Handzo</p> <p>2 indicated for individual record labels to default</p> <p>3 back to this proceeding rather than to engaging in</p> <p>4 transactions.</p> <p>5 And I'm just connecting it all up and</p> <p>6 back to testimony and deposition testimony which --</p> <p>7 in two minutes, which Mr. Handzo worked with.</p> <p>8 CHIEF JUDGE BARNETT: Questions?</p> <p>9 Overruled.</p> <p>10 Go ahead.</p> <p>11 BY MR. RICH:</p> <p>12 Q. Do you have the question in mind?</p> <p>13 A. No.</p> <p>14 Q. Let me try it again.</p> <p>15 A. I lose focus when lawyers talk.</p> <p>16 Q. What is your understanding from the</p> <p>17 record evidence ---</p> <p>18 CHIEF JUDGE BARNETT: We do that on</p> <p>19 purpose.</p> <p>20 (Laughter.)</p> <p>21 BY MR. RICH:</p> <p>22 Q. What is your understanding from the</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

460	<p>1 record evidence as to the nature of SoundExchange's</p> <p>2 reaction to the prospect that in this proceeding,</p> <p>3 in this courtroom, during this hearing, evidence</p> <p>4 would be adduced as to direct licenses reflecting</p> <p>5 demand diversion for increased plays on SiriusXM?</p> <p>6 Do you have an understanding of that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. What is that understanding?</p> <p>9 A. Explicitly, they stated that they did</p> <p>10 not want independent labels to sign direct licenses</p> <p>11 out of the expectation that it would have a</p> <p>12 negative effect on the rate that would come out of</p> <p>13 this proceeding.</p> <p>14 Q. And are you aware of any documents that</p> <p>15 you reviewed that indicate out of SoundExchange's</p> <p>16 own mouth communications to members of</p> <p>17 SoundExchange and perhaps to others in the industry</p> <p>18 advising them that such transactions would, in</p> <p>19 fact, be used as evidence in this proceeding?</p> <p>20 A. Yes. That's -- both public and</p> <p>21 private.</p> <p>22 MR. RICH: Let me mark at this point as</p>
462	<p>1 Have you seen this document before?</p> <p>2 A. Yes, I have. I think I cited it, if</p> <p>3 I'm not mistaken.</p> <p>4 Q. And if you look down into the fourth</p> <p>5 paragraph, there's some bold typeface.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it reads, quote, We have long been</p> <p>9 preparing for this proceeding and are planning to</p> <p>10 seek a substantial increase in the statutory rate.</p> <p>11 In other words, we plan to seek rates well in</p> <p>12 excess of the 2012 rate of 8 percent.</p> <p>13 And then it goes on, As in the past, we</p> <p>14 will present evidence of the rates reflected in</p> <p>15 currently privately negotiated licenses in the</p> <p>16 marketplace. Those rates may play a very</p> <p>17 significant role in the outcome.</p> <p>18 Was that among the evidence you</p> <p>19 considered in reaching the conclusion you testified</p> <p>20 as to a few minutes ago?</p> <p>21 A. Yes.</p> <p>22 Q. And if you turn to Pages 54 and 55 of</p>
461	<p>1 SoundExchange Trial Exhibit Number 2 a document</p> <p>2 which also appears as SXM Direct Examination,</p> <p>3 Exhibit 10 to -- to Mr. Frear's direct testimony.</p> <p>4 MR. HANDZO: I'm standing only to</p> <p>5 interrupt to say I don't think that can be</p> <p>6 SoundExchange Trial Exhibit 2.</p> <p>7 MR. RICH: It's been a long day.</p> <p>8 The SX and SXM is driving me crazy.</p> <p>9 Thank you.</p> <p>10 SiriusXM Trial Exhibit 2.</p> <p>11 CHIEF JUDGE BARNETT: It would be</p> <p>12 Number 2 for SiriusXM.</p> <p>13 (SiriusXM Trial Exhibit Number 2 was</p> <p>14 marked for identification purposes.)</p> <p>15 THE WITNESS: I seem to be left out.</p> <p>16 I'm the only one in the whole room who doesn't have</p> <p>17 one.</p> <p>18 Thank you.</p> <p>19 BY MR. RICH:</p> <p>20 Q. Dr. Noll. I put before you a document</p> <p>21 which -- which appears to be an August 2011 release</p> <p>22 by SoundExchange.</p>
463	<p>1 your written direct testimony for a moment.</p> <p>2 In the carryover paragraph beginning,</p> <p>3 These statements reveal widespread recognition</p> <p>4 among industry personnel that the direct licensing</p> <p>5 activity of SiriusXM is likely to lead to lower</p> <p>6 rates because it leads to competition among record</p> <p>7 companies and so forth, I take it that's also a --</p> <p>8 a -- well, let me not -- let me ask you -- let me</p> <p>9 read the balance in the record, then let me ask you</p> <p>10 a question.</p> <p>11 Whereas many record companies,</p> <p>12 including the four majors, are unwilling to enter</p> <p>13 into meaningful negotiations for direct licenses,</p> <p>14 these statements show that the source of this</p> <p>15 reluctance is the expectation that letting</p> <p>16 SoundExchange lead a collective effort to set a</p> <p>17 single statutory rate for the entire industry will</p> <p>18 produce more royalty income for all because</p> <p>19 SoundExchange will not respond to the competitive</p> <p>20 incentive facing each record company to compete on</p> <p>21 the basis of price in order to receive more plays.</p> <p>22 This phenomenon is precisely why the direct</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

464	<p>1 licenses between SiriusXM and 62 record companies 2 are the most appropriate benchmark for this 3 proceeding. 4 Does that accurately summarize that -- 5 your conclusion as to this aspect of 6 SoundExchange's reaction, as it were, to the direct 7 licenses, and would you care to amplify it in any 8 way? 9 A. Yeah. 10 So the basic point is that the 11 expressed concern in not only this document, but 12 other documents cited in my report is precisely 13 this, that if you have a reasonably competitive 14 marketplace where there are willing buyers and 15 willing sellers entering into transactions, and the 16 right that is being transacted is essentially the 17 same as the right that's -- that's at stake here, 18 then that is -- is going to be of profound 19 importance in setting the rate. It has to be -- it 20 at least has to be taken very seriously. 21 And it's that phenomena that leads -- 22 led SoundExchange and other industry associations</p>	466	<p>1 to separate negotiations between a 2 rights holder -- a rights user and a 3 record company, end quote. 4 "Do you see that? 5 "Answer: Uh-huh. 6 "Question: What impact, in 7 your view, does that have on the 8 negotiation of direct licenses? 9 "Answer: The impact it has is 10 that, first of all, the rates 11 advocated by SoundExchange do not -- 12 because they are uniform across all 13 record companies, they eliminate the 14 possibility of demand diversion, so 15 they remove the incentive for 16 competition. 17 "That means that the choice 18 facing a particular label is not one 19 of strict competition, but it is a 20 competition overlaid by the 21 uniformity of the statutory rate, 22 which is not based on the most</p>
465	<p>1 to try to -- to convince their members that they 2 shouldn't sign such agreements. 3 Q. Do you still have your deposition 4 transcript in front of you? Mr. Handzo read you an 5 excerpt at Page 85, I believe, from that -- pardon 6 me -- from Page 89 of that. 7 A. Okay, I'm there. 8 Q. I'm going to go back to the bottom 9 beginning at Line 18 of Page 85 to put that in its 10 proper context since that was the end of a rather 11 lengthy colloquy, and ask you if that's a more 12 complete recitation of your testimony at the time 13 and if it's accurate. 14 So beginning at Line 18 on Page 85: 15 "Question: Flipping over to 16 Page 30 of your testimony, Dr. Noll, 17 there's a line in the middle of the 18 first full paragraph which reads, 19 quote, In other circumstances, 20 SoundExchange represents all or 21 nearly all record companies in a rate 22 proceeding that offers an alternative</p>	467	<p>1 important form of competition that 2 exists in the industry. 3 "Question: If the Copyright 4 Royalty Judges set a uniform rate, 5 individual record labels remain free 6 to negotiate a direct license with 7 SiriusXM, correct? 8 "Answer: That's correct. 9 "Question: Wouldn't the 10 incentive to -- that you've talked 11 about to negotiate a lower rate in 12 order to get additional plays, still 13 exist even in the presence of a 14 unitary rate set by the Copyright 15 Royalty Judges? 16 "Mr. Rich: Objection. I 17 didn't understand the question. 18 "Question: Okay. Leaving 19 aside the statutes, and let's talk 20 about this as a matter of economics, 21 if a regulatory body sets a rate that 22 applies to all sellers in the</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

468	<p>1 industry, isn't it still the case</p> <p>2 that an incentive might exist for the</p> <p>3 seller -- for an individual seller to</p> <p>4 undercut that rate if it can increase</p> <p>5 the volume of its sales by doing it?</p> <p>6 "Answer: Yes, such an</p> <p>7 incentive would exist, and it differs</p> <p>8 among the players. Because since the</p> <p>9 rate is sort of an average rate,</p> <p>10 instead -- there's going to be a</p> <p>11 degree to which there's incentive to</p> <p>12 defect from the collusive</p> <p>13 equilibrium, if you will, which</p> <p>14 differs among companies, Number 1;</p> <p>15 and, Number 2, the significance of</p> <p>16 the defection for what the market</p> <p>17 equilibrium will be is enormously</p> <p>18 different if you are a little single</p> <p>19 artist label with a .0001</p> <p>20 market share, compared to if you are</p> <p>21 Universal.</p> <p>22 "If Universal defects, they</p>	470	<p>1 What I said is it reduces it. And in</p> <p>2 particular, the collusive equilibrium</p> <p>3 in the regulated context -- I mean,</p> <p>4 you can't abstract from the regulated</p> <p>5 context, right, because it is the</p> <p>6 presence of regulation that causes</p> <p>7 SoundExchange to exist. All right.</p> <p>8 "In the absence of the</p> <p>9 regulatory process, SoundExchange</p> <p>10 wouldn't exist, and anything that</p> <p>11 looked like SoundExchange would be</p> <p>12 obviously just a cartel, right? So</p> <p>13 I'm using the word as an economist</p> <p>14 would use it, not as a lawyer would</p> <p>15 use it. But this is a firm -- an</p> <p>16 industry with a very small number of</p> <p>17 dominant firms and a very large</p> <p>18 number of tiny fringe firms. And the</p> <p>19 incentive operating upon the fringe</p> <p>20 firms are very different than the</p> <p>21 incentives operating upon the</p> <p>22 dominant firms, end quote."</p>
469	<p>1 all defect. If it a tiny label in a</p> <p>2 secondary genre defects, there's not</p> <p>3 likely to be any disruption of the</p> <p>4 collusive price. So what companies</p> <p>5 need to take into account is what is</p> <p>6 the effect of my defection on the</p> <p>7 whole market equilibrium. And if you</p> <p>8 are some small company, it doesn't --</p> <p>9 you're not going to have any</p> <p>10 significant effect on the market</p> <p>11 outcome.</p> <p>12 "Question: Okay. I</p> <p>13 understand your testimony, in</p> <p>14 essence, to be that the fact that</p> <p>15 there is a uniform rate set by the</p> <p>16 Copyright Royalty Judges essentially</p> <p>17 eliminates the incentive for</p> <p>18 individual record companies to</p> <p>19 underprice that in an effort to</p> <p>20 create demand diversion?</p> <p>21 "Answer: No, no. If it did,</p> <p>22 we wouldn't have any direct licenses.</p>	471	<p>1 Is that an accurate summation of your</p> <p>2 testimony?</p> <p>3 A. Yeah, that's how I tried to answer when</p> <p>4 I was being questioned and that's my view, yes.</p> <p>5 Q. Now, Mr. Handzo asked you a series of</p> <p>6 questions attempting to elicit that there was some</p> <p>7 kind of informational disadvantage or imbalance in</p> <p>8 the direct license setting, on the one hand,</p> <p>9 between SiriusXM, its sophistication, its knowledge</p> <p>10 of this proceeding and the like, and a typical</p> <p>11 independent label.</p> <p>12 Do you recall that colloquy with him?</p> <p>13 A. I do.</p> <p>14 Q. Now, are you aware of any evidence</p> <p>15 that, in fact, indies considering SiriusXM's direct</p> <p>16 license actually consulted with others in the</p> <p>17 record industry as part of the process of</p> <p>18 determining whether to enter into the arrangement?</p> <p>19 A. Of course. There's lots of evidence</p> <p>20 that they did do, in fact, that.</p> <p>21 MR. RICH: And I'm going to mark now as</p> <p>22 our next exhibit -- as SiriusXM Trial Exhibit 3 a</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

472	<p>1 document produced out of the discovery files by 2 SoundExchange. 3 (SiriusXM Trial Exhibit Number 3 was 4 marked for identification purposes.) 5 MR. RICH: And because this document, 6 Your Honors, is marked restricted, I'm not going to 7 identify the sender except to indicate that it's an 8 individual -- a representative of a record label 9 identified at the top of this e-mail chain. 10 And it's addressed to an individual at 11 musicreports.com, which I'll represent is MRI, 12 which Your Honors now understand to be the agent 13 that was facilitating the direct license 14 transactions. 15 BY MR. RICH: 16 Q. Have you seen this e-mail before -- 17 this e-mail chain? 18 A. Yes, I have, yes. 19 Q. And I'm simply going to quote one 20 sentence from it. Down in the third line of the 21 topmost e-mail, it says, quote, I heard -- this is 22 from this individual at this unnamed label --</p>	474	<p>1 trade association, A2IM. 2 (SiriusXM Trial Exhibit Number 4 was 3 marked for identification purposes.) 4 MR. RICH: While I'll do that, 5 Your Honors, I would offer in evidence SiriusXM 6 Trial Exhibits 2 and 3. 7 CHIEF JUDGE BARNETT: Any objection? 8 MR. HANDZO: I don't object. I do want 9 to correct. 10 I think Mr. Rich may have misspoken. I 11 believe I heard him say this was produced from 12 SoundExchange's files. It bears a SiriusXM 13 Bates number. 14 MR. RICH: My apologies again. Thank 15 you for correcting me. 16 Your Honors, has there been a ruling on 17 the others? I may have missed it. 18 CHIEF JUDGE BARNETT: I'm sorry. Two 19 and 3 are admitted. 20 (SiriusXM Trial Exhibit Numbers 2 and 3 21 were admitted into evidence.) 22</p>
473	<p>1 quote, I heard that XM -- which was a mis -- a 2 misstatement for SiriusXM, I take it -- was making 3 these requests. 4 MR. RICH: And that's a reference, if 5 you look down in the chain, Your Honors, to the 6 direct license proposal put forward. 7 BY MR. RICH: 8 Q. Quote. I will look at the license, but 9 will also confer with A2IM and other indies, closed 10 quote. 11 Do you know what A2IM is a reference 12 to? 13 A. Yeah, it's the trade association of the 14 independents. 15 Q. Is that typical of documents you saw of 16 this type indicating that one or more perspective 17 licensors was going to, quote, consult with others? 18 A. Well, yes. There are lots of documents 19 that discuss consulting not only with A2IM, but 20 with others. 21 MR. RICH: Let me mark next as SiriusXM 22 Trial Exhibit 4 a document authored by the same</p>	475	<p>1 BY MR. RICH: 2 Q. Do you have in front of you what we 3 have marked as SiriusXM Exhibit 4? 4 A. Yes. 5 JUDGE ROBERTS: Before we move on to 6 that, Mr. Rich -- 7 MR. RICH: Yes, sir. 8 JUDGE ROBERTS: -- Professor Noll, I 9 notice that Exhibit 3, while not in the portion 10 that Mr. Rich read, but does mention most favored 11 nation clause. 12 THE WITNESS: Yes. 13 JUDGE ROBERTS: Does that refresh your 14 recollection at all as to whether any of the 15 agreements that you reviewed might have the clause 16 in there? 17 THE WITNESS: I'm fairly certain That 18 nothing I've seen has an MFN clause, but I would 19 hate to testify to 80 licenses. All right? 20 I do not recall ever having seen an MFN 21 clause in any of these licenses, but testifying 22 from memory of all 80 is not -- doesn't mean there</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

476	<p>1 aren't any; it's just that I've never seen one.</p> <p>2 The point is these license actually</p> <p>3 expire at a given point in time. There would be a</p> <p>4 year and a half, two years into the statutory</p> <p>5 license that comes out of this proceeding, and they</p> <p>6 do not have -- the ones I have seen do not have</p> <p>7 anything other than, at that point, either party</p> <p>8 can opt out.</p> <p>9 JUDGE ROBERTS: Thank you.</p> <p>10 BY MR. RICH:</p> <p>11 Q. Have you seen the document that's been</p> <p>12 marked as Exhibit 4 previously?</p> <p>13 A. Yes. I actually found this on my own</p> <p>14 looking on the Internet.</p> <p>15 Q. And if you look in the second</p> <p>16 paragraph, you'll see in the -- I believe in the</p> <p>17 second sentence, the statement, quote,</p> <p>18 SoundExchange -- this is the -- the industry</p> <p>19 organization for independent labels, correct,</p> <p>20 writing this?</p> <p>21 A. Yes.</p> <p>22 Q. -- quote, SoundExchange is an advocate</p>	478	<p>1 if you're a seller, you would be more prone,</p> <p>2 actually, to pay attention to the information</p> <p>3 coming from the industry side than from the person</p> <p>4 who is trying to buy your rights.</p> <p>5 Q. Now, Mr. Handzo asked you a series of</p> <p>6 questions about the import of the fact that a label</p> <p>7 entering into a direct license would receive fully</p> <p>8 100 percent of the royalties coming from SiriusXM</p> <p>9 in contradistinction to the percentage it would</p> <p>10 receive as a distributee under a statutory royalty.</p> <p>11 Do you remember that?</p> <p>12 A. I do.</p> <p>13 Q. I just have one question on this.</p> <p>14 What is your understanding -- let's</p> <p>15 assume that a label is a signatory to a direct</p> <p>16 license.</p> <p>17 What is your understanding as to how it</p> <p>18 will go about making its determination as to what</p> <p>19 portion of those royalties to disburse, or pass</p> <p>20 along, to its artists and/or -- again, to a</p> <p>21 dialogue you had with Mr. Handzo -- how it would</p> <p>22 treat recouping advances or the like? How would</p>
477	<p>1 for the highest possible royalty rates for</p> <p>2 noninteractive digital music streaming services.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then down two paragraphs, Members</p> <p>6 have been calling to ask about the SoundExchange</p> <p>7 statutory license, so we just want to advise our</p> <p>8 members that the Copyright Royalty Board set</p> <p>9 SoundExchange rate for 2011 is 7.5 percent of</p> <p>10 revenues and, for 2012, will be 8 percent of</p> <p>11 revenues. And for years subsequent to 2012,</p> <p>12 SoundExchange will be seeking a rate increase over</p> <p>13 the 8 percent of revenues rate in the CRB rate</p> <p>14 hearing, unquote.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Does that suggest to you an information</p> <p>18 imbalance or disadvantage in relation to the direct</p> <p>19 licensing efforts?</p> <p>20 A. No. That was what I was referring to</p> <p>21 in my answer before, that there is lots of</p> <p>22 information available from the industry side. And</p>	479	<p>1 that happen?</p> <p>2 A. Based on the contracts it has with its</p> <p>3 artists, it -- it will do whatever the contracts</p> <p>4 call for.</p> <p>5 Q. It's not a matter of the whim of the</p> <p>6 record company, is it?</p> <p>7 A. No, no.</p> <p>8 Q. Now, Mr. Handzo also asked you a series</p> <p>9 of questions indicating what we've established,</p> <p>10 which is that no major has, to date, entered into</p> <p>11 any direct licenses; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, if you could turn briefly to</p> <p>14 Pages 40 and 41 of your direct testimony, please,</p> <p>15 written direct.</p> <p>16 Are you there?</p> <p>17 A. I'm there.</p> <p>18 Q. There's a section titled Incentives of</p> <p>19 major to compete.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. What are you communicating in that</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

480	<p>1 section of the report?</p> <p>2 A. This section is an investigation of the</p> <p>3 incentives of -- of an individual major to defect</p> <p>4 from the -- the unitary price charged to all and</p> <p>5 sign a direct license. And it -- it deals with</p> <p>6 calculating what the pluses and minuses are and</p> <p>7 what would have to be true for them to want to be</p> <p>8 willing to sign such a license.</p> <p>9 Q. So do you have an opinion that absent</p> <p>10 the availability of this forum and of SoundExchange</p> <p>11 as an alternative vehicle for licensing rights to</p> <p>12 SiriusXM, the degree of interest one would have</p> <p>13 expected to see from one or more majors to the</p> <p>14 SoundExchange license -- to the -- pardon me -- to</p> <p>15 the SiriusXM license offer?</p> <p>16 A. Yes. The basic story is that the</p> <p>17 existence of a process for setting uniform rate</p> <p>18 basically eliminates the incentive of labels to</p> <p>19 sign direct licenses on their own, even though if</p> <p>20 they thought they could get away with it and be the</p> <p>21 only one, they would have a powerful incentive to</p> <p>22 do so.</p>	482	<p>1 account.</p> <p>2 So if you just think in a simpleminded</p> <p>3 way about hot dogs arrayed on a beach, if one hot</p> <p>4 dog stand in the middle of the beach cuts its</p> <p>5 price, the immediate effect is not on hot dog</p> <p>6 stands a mile away, but there's a cascade effect.</p> <p>7 And competition by the nearest neighbor spills over</p> <p>8 into the next neighbors, spills over into the next</p> <p>9 neighbors, and affects the price structure across</p> <p>10 the entire spectrum.</p> <p>11 So -- and in the end, the hot dog stand</p> <p>12 a mile away who has no competitive overlap with the</p> <p>13 hot dog stand right here ends up having to cut its</p> <p>14 price because the hot dog stand right here cut its</p> <p>15 price. And that's the same mechanism going on.</p> <p>16 This is a product differentiated</p> <p>17 industry where there probably is very little direct</p> <p>18 competition, say, between interactive services and</p> <p>19 terrestrial radio, but if you change the rights</p> <p>20 prices for anything in the middle, it changes them</p> <p>21 for them all. Because that's the nature of the</p> <p>22 competitive process is they will have an</p>
481	<p>1 Q. My final question relates to a couple</p> <p>2 of answers you gave relating to the impact of this</p> <p>3 regulatory process on how one thinks about the</p> <p>4 competitiveness and the nature of licenses reached</p> <p>5 with this overhang.</p> <p>6 And you testified to the effect that</p> <p>7 all licenses, or something like that, in the</p> <p>8 digital domain are affected by it, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And my specific question is, what about</p> <p>11 something like interactive services? Are they</p> <p>12 affected by the regulatory overhang and, if so,</p> <p>13 how?</p> <p>14 A. Yeah, because the premise, actually,</p> <p>15 that experts on both sides undertake is that</p> <p>16 somehow there is this relationship in price between</p> <p>17 the different forms of digital delivery of music</p> <p>18 that exists. And that's because there does exist</p> <p>19 some degree of substitution across elasticity</p> <p>20 across all these things.</p> <p>21 It doesn't mean that's the only effect.</p> <p>22 but it is an effect that needs to be taken into</p>	483	<p>1 interaction effect on each other.</p> <p>2 MR. RICH: Your Honors, I would like to</p> <p>3 offer our Trial Exhibit 4 in evidence at this</p> <p>4 point.</p> <p>5 CHIEF JUDGE BARNETT: Mr. Fakler, any</p> <p>6 objection?</p> <p>7 MR. FAKLER: No objection, Your Honor.</p> <p>8 CHIEF JUDGE BARNETT: Mr. Handzo?</p> <p>9 MR. HANDZO: No objection.</p> <p>10 CHIEF JUDGE BARNETT: It is admitted.</p> <p>11 (SiriusXM Trial Exhibit Number 4 was</p> <p>12 admitted into evidence.)</p> <p>13 MR. RICH: Thank you.</p> <p>14 That concludes my redirect.</p> <p>15 CHIEF JUDGE BARNETT: Thank you.</p> <p>16 Mr. Handzo, recross?</p> <p>17 MR. HANDZO: No. Your Honor.</p> <p>18 CHIEF JUDGE BARNETT: Thank you.</p> <p>19 May this witness be excused?</p> <p>20 JUDGE WISNIEWSKI: No.</p> <p>21 CHIEF JUDGE BARNETT: Judge Wisniewski.</p> <p>22 I should have known.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

484	<p>1 JUDGE WISNIEWSKI: Thank you. I</p> <p>2 appreciate it, Judge Barnett.</p> <p>3 Just a few questions, Professor Noll.</p> <p>4 I'm trying to clarify some numbers and so forth.</p> <p>5 At Page 40 of your testimony, you talk</p> <p>6 about the four major record companies accounting</p> <p>7 for between 55 and 65 percent of all plays on</p> <p>8 SiriusXM.</p> <p>9 Do you know what period we're talking</p> <p>10 about there?</p> <p>11 THE WITNESS: A couple of years ago. I</p> <p>12 believe these data were for, like, 2010, 2011,</p> <p>13 something like that.</p> <p>14 JUDGE WISNIEWSKI: So for, like, the</p> <p>15 whole year?</p> <p>16 THE WITNESS: Maybe more than a year,</p> <p>17 yeah. I don't have it memorized, but it wasn't a</p> <p>18 day. It was an extensive period of time.</p> <p>19 JUDGE WISNIEWSKI: And what about the</p> <p>20 pre-1970 recordings? Does that include that</p> <p>21 number -- is that included in that number?</p> <p>22 THE WITNESS: I'm sorry. I didn't --</p>
485	<p>1 the pre what?</p> <p>2 JUDGE WISNIEWSKI: The pre-1970s</p> <p>3 recordings, is that included in this number?</p> <p>4 THE WITNESS: No. I think this is</p> <p>5 everything, not just the things that are big, but</p> <p>6 I'm not sure of that. You should -- I got this</p> <p>7 number from Mr. Gertz, so he's the one to ask the</p> <p>8 question about what exactly -- how do you unpack</p> <p>9 it.</p> <p>10 JUDGE WISNIEWSKI: So I should ask him.</p> <p>11 THE WITNESS: It may well be -- you're</p> <p>12 right, it may well be the thing for which a license</p> <p>13 fee is due, which would exclude the pre-'70</p> <p>14 recordings.</p> <p>15 JUDGE WISNIEWSKI: On Page 66 in your</p> <p>16 testimony, you're talking about the survey data the</p> <p>17 audience in cars for Pandora, other Internet</p> <p>18 streaming service, SiriusXM and so forth.</p> <p>19 THE WITNESS: Yes.</p> <p>20 JUDGE WISNIEWSKI: In talking about</p> <p>21 that and making those comparisons where it talks</p> <p>22 about audience ratings --</p>
486	<p>1 THE WITNESS: Yes.</p> <p>2 JUDGE WISNIEWSKI: -- are those data</p> <p>3 disaggregated for music listening as opposed to</p> <p>4 nonmusic listening?</p> <p>5 THE WITNESS: No, they are not.</p> <p>6 This is just the total -- yes, this is</p> <p>7 the total audience in cars for all radio, yeah.</p> <p>8 JUDGE WISNIEWSKI: On Pages 83 and 84</p> <p>9 of your testimony, where you're referencing</p> <p>10 Mr. Hauser's study --</p> <p>11 THE WITNESS: Yes.</p> <p>12 JUDGE WISNIEWSKI: -- I was a little</p> <p>13 puzzled by the language you use in there.</p> <p>14 THE WITNESS: Okay.</p> <p>15 JUDGE WISNIEWSKI: Isn't it true that</p> <p>16 Mr. Hauser never claims to show how much less</p> <p>17 consumers would be willing to pay for satellite</p> <p>18 radio if music channels were discontinued?</p> <p>19 THE WITNESS: He asks what is the</p> <p>20 incremental -- he has a precise way of saying it in</p> <p>21 his report, so --</p> <p>22 JUDGE WISNIEWSKI: Didn't he actually</p>
487	<p>1 claim to show how much consumers would be willing</p> <p>2 to pay for music channels that would be available</p> <p>3 in conjunction with several other characteristics?</p> <p>4 THE WITNESS: I don't think he uses</p> <p>5 either characterization.</p> <p>6 Let me -- let me get his report to be</p> <p>7 precise, because I don't want to mischaracterize</p> <p>8 him.</p> <p>9 It says, They're willing to pay 3.24</p> <p>10 for music, which is reduced to \$2.11 when music is</p> <p>11 limited to music recorded since 1970. That's the</p> <p>12 willingness to pay for music.</p> <p>13 JUDGE WISNIEWSKI: But he doesn't</p> <p>14 separate that out from the other characteristics,</p> <p>15 does he?</p> <p>16 THE WITNESS: The way the survey is</p> <p>17 constructed is -- is to -- you can -- is to accept</p> <p>18 the characteristics and then add music, okay?</p> <p>19 JUDGE WISNIEWSKI: And in all</p> <p>20 likelihood, there's some interaction effect between</p> <p>21 those variables, isn't it?</p> <p>22 THE WITNESS: That was the discussion.</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

488	<p>1 As you know, if you -- remember the old literature</p> <p>2 on what is the effect of deregulating surface</p> <p>3 transportation? And if you did railroads first and</p> <p>4 then trucks, you would assign almost all the value</p> <p>5 to railroads; if you did trucks first and then</p> <p>6 railroads, you'd assign almost all the value to</p> <p>7 trucks.</p> <p>8 It is the same phenomena that when --</p> <p>9 when there are multiple things affecting the area</p> <p>10 under the demand curve, the amount you attribute to</p> <p>11 each act independently depends upon the order in</p> <p>12 which you do them.</p> <p>13 JUDGE WISNIEWSKI: And in the Hauser</p> <p>14 study, he -- he essentially factors out the</p> <p>15 pre-1970s music.</p> <p>16 Did you account for that?</p> <p>17 THE WITNESS: No, I did not. I made no</p> <p>18 attempt to do that.</p> <p>19 I just used the gross number, the \$3.24</p> <p>20 number.</p> <p>21 JUDGE WISNIEWSKI: Turning to Pages 84</p> <p>22 and 85 on your comedy channel adjustment.</p>	490	<p>1 into account. And I -- that's why I ended up with</p> <p>2 55 percent instead of 50, as Janusz did.</p> <p>3 JUDGE WISNIEWSKI: On Page 91, the top</p> <p>4 of 92, toward the end there, basically.</p> <p>5 THE WITNESS: I'm sorry. I didn't hear</p> <p>6 you.</p> <p>7 JUDGE WISNIEWSKI: Ninety-one and 92,</p> <p>8 you're talking about COLA adjustments, actually.</p> <p>9 And I'm trying to figure out are you</p> <p>10 saying no COLA adjustment is needed after 2012</p> <p>11 because the rate of revenue growth will be</p> <p>12 sufficient to produce the same results?</p> <p>13 THE WITNESS: What I'm saying is the</p> <p>14 right way to think about this -- the reason that</p> <p>15 there's a difference between a percentage rate and</p> <p>16 a per-play rate is that the per-play rate would,</p> <p>17 over time, be undermined by inflation; whereas the</p> <p>18 percentage rate wouldn't.</p> <p>19 The rate of inflation and the rate of</p> <p>20 price increase would just automatically lead to</p> <p>21 more royalty payments if you use a percentage rate</p> <p>22 than if you use a per-play rate.</p>
489	<p>1 THE WITNESS: Yes.</p> <p>2 JUDGE WISNIEWSKI: Could you elaborate</p> <p>3 on why you think the number of channels is a good</p> <p>4 proxy for the number of plays?</p> <p>5 THE WITNESS: I have no idea what the</p> <p>6 right number is.</p> <p>7 Normally, comedy records last longer,</p> <p>8 and so you would expect fewer plays. But I don't</p> <p>9 have any hard evidence about that, so -- and I</p> <p>10 don't -- and I certainly don't have any number --</p> <p>11 any evidence about the audience ratings of the</p> <p>12 comedy versus the others.</p> <p>13 JUDGE WISNIEWSKI: But you have</p> <p>14 actually used a number of channels as a proxy for</p> <p>15 that. I'm trying to see if there's some</p> <p>16 relationship there that you're positing.</p> <p>17 THE WITNESS: The underlying assumption</p> <p>18 is that the frequency of plays and the audience</p> <p>19 rating is the same for comedy channels as it is for</p> <p>20 the others. and that may not be true.</p> <p>21 I -- I -- I simply say -- at least I</p> <p>22 made an adjustment. You know, I tried to take that</p>	491	<p>1 So the logic of why you might want to</p> <p>2 have a per-play rate go up at a relatively small</p> <p>3 rate, which -- which it does over time, doesn't</p> <p>4 carry over to the percentage rate.</p> <p>5 JUDGE WISNIEWSKI: Back on the earlier</p> <p>6 part of your testimony, around Pages 24 and 25, you</p> <p>7 talk about -- this is the section dealing with fair</p> <p>8 return.</p> <p>9 THE WITNESS: Yes. Yes.</p> <p>10 JUDGE WISNIEWSKI: You talk about rates</p> <p>11 to allow both buyers and sellers to recover their</p> <p>12 costs.</p> <p>13 The discussion that you have there</p> <p>14 appears to be a little bit one sided in -- in favor</p> <p>15 of the buyer in this proceeding. There seems to be</p> <p>16 no mention or exploration of -- of whether the</p> <p>17 profits that you cite for the record companies are</p> <p>18 sufficient to allow the record companies and the</p> <p>19 artists to recover their initial investments.</p> <p>20 And I was wondering why you didn't</p> <p>21 focus on that.</p> <p>22 THE WITNESS: This is simply an attempt</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

492	<p>1 to deal with the SXM side of it. We had a</p> <p>2 discussion today about how the incentive</p> <p>3 structure --</p> <p>4 JUDGE WISNIEWSKI: I think you just</p> <p>5 answered my question, actually.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 JUDGE WISNIEWSKI: Thank you.</p> <p>8 THE WITNESS: Yeah. Okay.</p> <p>9 JUDGE WISNIEWSKI: Beginning about</p> <p>10 Page 36 -- 35, excuse me -- and I think we talked</p> <p>11 about this a little bit before -- you talked about</p> <p>12 the direct licenses and why they're the most</p> <p>13 appropriate benchmark. And in particular, Number 3</p> <p>14 there, you said, The buyer is the only provider of</p> <p>15 SDARS.</p> <p>16 THE WITNESS: That gets back to the</p> <p>17 question you asked yesterday.</p> <p>18 JUDGE WISNIEWSKI: And I guess what --</p> <p>19 what that raises is if there are, in fact, other</p> <p>20 competitors to SiriusXM of the kind you have</p> <p>21 described and others are preparing to describe in</p> <p>22 this proceeding, doesn't that kind of disappear?</p>	494	<p>1 close substitute for Pandora, because they are</p> <p>2 different, and I have no way of making that</p> <p>3 adjustment. I mean I'm -- you know, there is no</p> <p>4 objective way to say, well, what should the</p> <p>5 appropriate adjustment be when you move away from</p> <p>6 SDARS to the next closest competitor.</p> <p>7 JUDGE WISNIEWSKI: That's kind of the</p> <p>8 question that I'm getting to and struggling with</p> <p>9 here on the basis of the testimony that you</p> <p>10 provided.</p> <p>11 Because if, in fact, there are such</p> <p>12 competitors, if we are talking about a market that</p> <p>13 is one where -- it -- the supplier side of the</p> <p>14 market is product differentiated, for example, if</p> <p>15 we were talking about the brands of soda, the same</p> <p>16 sort of thing, if we were trying to get to a market</p> <p>17 price, we wouldn't just focus on Coca-Cola and</p> <p>18 Pepsi; we would, in fact, focus on all of the</p> <p>19 prices, even in that product differentiated market,</p> <p>20 to come up with a -- a market price.</p> <p>21 THE WITNESS: The issue would be</p> <p>22 notice -- that's a great example, because suppose</p>
493	<p>1 THE WITNESS: Well, in a product</p> <p>2 differentiated industry -- and, indeed, I -- I'll</p> <p>3 give you an argument why you can't have identical</p> <p>4 comparisons -- identical competitors in this</p> <p>5 industry in general, which is, whatever --</p> <p>6 whichever element of it you're in, whether it's</p> <p>7 like SiriusXM, where you're combining platform and</p> <p>8 content, or whether you're just a -- a content</p> <p>9 provider using somebody else's platform, there's</p> <p>10 fixed costs associated with it, which means that</p> <p>11 equilibrium market structure has to be product</p> <p>12 differentiation; that you're never going to have a</p> <p>13 circumstance where many competitive substitutes</p> <p>14 exist that are perfect substitutes side by side,</p> <p>15 because if they did, they couldn't recover their</p> <p>16 costs.</p> <p>17 All right. So -- so what this means is</p> <p>18 that we can go the next step away from SiriusXM and</p> <p>19 identify the next closest competitor, but that</p> <p>20 competitor won't be a perfect substitute.</p> <p>21 There will be some -- that's why I just</p> <p>22 wrestled with just using Last.fm, which is a pretty</p>	495	<p>1 that we have the Cola Rights Board, all right --</p> <p>2 JUDGE WISNIEWSKI: I'm sorry. I didn't</p> <p>3 hear you.</p> <p>4 THE WITNESS: -- the Cola Rights Board,</p> <p>5 and it's supposed to determine the transactions</p> <p>6 price between, say, generic cola manufacturers and</p> <p>7 large supermarket chains. But out there, we have</p> <p>8 Pepsi and Cola setting market prices.</p> <p>9 That would be too high, because we know</p> <p>10 from observation in the real world that the generic</p> <p>11 Cola manufacturers have lower prices than Pepsi and</p> <p>12 Coke.</p> <p>13 Likewise, if we use the set of generic</p> <p>14 manufacturers to set a price for Pepsi, the price</p> <p>15 would be too low for Pepsi.</p> <p>16 So that's a good example is when you go</p> <p>17 to the grocery store and you look at all the colas,</p> <p>18 yes, it's true that Pepsi and Coke are pretty much</p> <p>19 the same, although they might have a sale, and then</p> <p>20 Royal Crown is a little cheaper, and then all the</p> <p>21 brand names that are -- that just say Cola on them</p> <p>22 are cheaper still. And that's the problem.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

496	<p>1 And so SDARS is SDARS, and then there</p> <p>2 are some nearby competitors that have different</p> <p>3 features. And, you know, let's call those the</p> <p>4 generic colas. And I have to worry about how I</p> <p>5 adjust from the generic cola to the Cola whose</p> <p>6 price I'm trying to set.</p> <p>7 And in this case, I don't know how to</p> <p>8 do that. And that's why I'm sort of ignoring it.</p> <p>9 I just accept those as being substitutes, even</p> <p>10 though everybody here knows they're not; they're</p> <p>11 not perfect substitutes.</p> <p>12 JUDGE WISNIEWSKI: Well, but if you --</p> <p>13 if you do that, okay, then, if Sirius is the only</p> <p>14 buyer, doesn't that really mean that what you're</p> <p>15 asking us to do is to set a rate based on monopsony</p> <p>16 power, because then we're reflecting the market --</p> <p>17 THE WITNESS: No, because --</p> <p>18 JUDGE WISNIEWSKI: -- as you have</p> <p>19 defined the market --</p> <p>20 THE WITNESS: -- product</p> <p>21 differentiation --</p> <p>22 JUDGE WISNIEWSKI: -- at most</p>	498	<p>1 substitution effect --</p> <p>2 THE WITNESS: No. I'm saying there is</p> <p>3 an important -- they would -- if there were no</p> <p>4 substitution effect, then, indeed, SiriusXM would</p> <p>5 be a monopolist.</p> <p>6 JUDGE WISNIEWSKI: But in your</p> <p>7 discussion of promotion and substitution, you have</p> <p>8 downplayed any substitution effect.</p> <p>9 THE WITNESS: That promotion and</p> <p>10 substitution discussion is about sales of digital</p> <p>11 downloads and CDs, all right? And the issue -- the</p> <p>12 issue there is there's a competitive substitution</p> <p>13 effect versus a positive informational</p> <p>14 complementary effect, all right?</p> <p>15 And when we talk about CDs and digital</p> <p>16 downloads, we're getting far enough away from what</p> <p>17 the SiriusXM product is so that the substitution</p> <p>18 effect gets overwhelmed by the promotional effect.</p> <p>19 But that wouldn't be true for the near</p> <p>20 neighbors, right, because the near neighbors,</p> <p>21 the -- the Pandoras of the world, are -- are mainly</p> <p>22 substitution. That's how you go about trying to</p>
497	<p>1 appropriate --</p> <p>2 THE WITNESS: -- the market definition</p> <p>3 is not -- in a product differentiated industry is</p> <p>4 not that every single firm is a monopoly.</p> <p>5 JUDGE WISNIEWSKI: But see, that's what</p> <p>6 you offered us here as the benchmark.</p> <p>7 THE WITNESS: No, no, I haven't,</p> <p>8 because I've also given you arguments about why I</p> <p>9 believe that it is inappropriate to refer to</p> <p>10 SiriusXM as either a monopolist in a product market</p> <p>11 because it has sufficient competitors that it</p> <p>12 isn't, but even if that were true, if it's</p> <p>13 acquiring an input in -- that is not only provided</p> <p>14 to it, but exactly the same input as applied to</p> <p>15 lots of other industries, then its monopoly power</p> <p>16 in the product market doesn't translate to any</p> <p>17 market power at all in the input market.</p> <p>18 So the argument about SiriusXM being</p> <p>19 unique to, therefore, there's a monopsony price, is</p> <p>20 wrong in two counts.</p> <p>21 JUDGE WISNIEWSKI: But if there is, as</p> <p>22 you were suggesting earlier, very little</p>	499	<p>1 define a market in a product differentiated</p> <p>2 industry. You start with the nearest neighbors and</p> <p>3 you keep expanding the number of firms in the</p> <p>4 market until the substitution effect against the</p> <p>5 firm you're interested in, which is SXM, is</p> <p>6 sufficiently small that that group as a</p> <p>7 collectivity could engage in effective price</p> <p>8 collusion.</p> <p>9 JUDGE WISNIEWSKI: But isn't the</p> <p>10 benchmark you're offering us not for a product</p> <p>11 differentiated producer?</p> <p>12 THE WITNESS: No, but it is a firm that</p> <p>13 faces -- two things: it's a firm that faces</p> <p>14 competition in the product market, so it doesn't</p> <p>15 have -- market power in the product market;</p> <p>16 secondly, it is -- that the inputs it requires,</p> <p>17 it's a tiny fraction of that input market, so it</p> <p>18 has no market power in that market either.</p> <p>19 So in order for SiriusXM to be a</p> <p>20 monopsonist in rights, it has to be the case that</p> <p>21 it has the ability to force the supplier to</p> <p>22 charge -- to set a lower price, and it doesn't</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

500	<p>1 because it has too low a market share.</p> <p>2 JUDGE WISNIEWSKI: So you're assuming</p> <p>3 that, in fact, if the input suppliers did not sell</p> <p>4 their product to SiriusXM, they would be able to</p> <p>5 sell it elsewhere --</p> <p>6 THE WITNESS: Yes.</p> <p>7 JUDGE WISNIEWSKI: -- to make up for</p> <p>8 that.</p> <p>9 THE WITNESS: Yeah. In other words,</p> <p>10 they have no good reason to -- to -- to subject</p> <p>11 themselves to the exercise of monopsony power for</p> <p>12 basically -- the first reason is Sirius is too</p> <p>13 small a share of the market, and the second reason</p> <p>14 is if they thought that was happening to them, they</p> <p>15 could just not sign the license and have their rate</p> <p>16 determined here.</p> <p>17 So it's just not a plausible scenario.</p> <p>18 JUDGE WISNIEWSKI: I'm glad you're</p> <p>19 helping to clarify this a bit, because the -- your</p> <p>20 written direct statement was a little bit confusing</p> <p>21 in that regard.</p> <p>22 THE WITNESS: I'm sorry.</p>	502
501	<p>1 JUDGE WISNIEWSKI: If you go through</p> <p>2 Pages 46 through 48 where you talk about the</p> <p>3 absence of monopsony power, you also talked about</p> <p>4 something that Sirius allegedly can offer that its</p> <p>5 terrestrial radio and Internet competitors can't</p> <p>6 really offer, and that's the kind of incentive to</p> <p>7 more plays relative to other record companies.</p> <p>8 THE WITNESS: Well, no. The</p> <p>9 terrestrial radio offers that and so do the</p> <p>10 Internet streaming services. They're just like</p> <p>11 radio. That's their --</p> <p>12 JUDGE WISNIEWSKI: But I thought you</p> <p>13 had indicated that that was a particularly good</p> <p>14 selling point for these direct agreements.</p> <p>15 THE WITNESS: No. I was making a</p> <p>16 parallel. I was saying that the promotional effect</p> <p>17 of terrestrial radio is like the promotional effect</p> <p>18 of Internet radio and satellite radio, too; that</p> <p>19 they have this feature that -- and that the closer</p> <p>20 you get to being user controlled, the less -- the</p> <p>21 more -- the more its -- it is a substitution effect</p> <p>22 and the less it's a complement.</p>	503

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

504	<p>1 even more than -- than the rights at issue here in 2 this proceeding. 3 How can you make that particular 4 assumption? Isn't it true that in every 5 negotiation, you can have situations where somebody 6 is willing to trade off a lower price for one item 7 in exchange for the opportunity to have the 8 additional right? 9 THE WITNESS: Well, from the standpoint 10 of Sirius, the value of these rights is not only 11 does it cover their satellite radio service, but 12 allows them the possibility in the future to 13 compete with the customized services. That's what 14 the right is. 15 And so, right now, they're at a 16 competitive disadvantage to Pandora and Last.fm and 17 all the rest, because they have no degree -- they 18 have no possibility for customization, no 19 possibility for caching, things like that. 20 What these licenses do is move the 21 relationship between the directed licensees and SXM 22 towards the same relationship that the same</p>	506	<p>1 to the right in this proceeding, and some further 2 right called X plus 1, which is an additional right 3 that's granted, okay, as a result of these direct 4 licensing agreements. 5 Isn't it possible that a record company 6 might be willing to offer a lower price provided 7 that what they're getting is X plus 1 and an 8 increased quantity of use under X plus 1, 9 therefore, their revenues go up? 10 THE WITNESS: The conditions under 11 which that's true are this -- is the incremental 12 right is less valuable. That's not true here. 13 We know from the existing licenses that 14 the incremental stuff they're giving up is actually 15 more valuable. 16 JUDGE WISNIEWSKI: How do you know 17 that? 18 THE WITNESS: Because of the license 19 rates that they obtained from it. We know what 20 they get from the -- the -- the -- we know from the 21 relationship between -- 22 JUDGE WISNIEWSKI: More valuable to</p>
505	<p>1 entities have with, say, Last.fm. 2 So in that sense, from the standpoint 3 of SiriusXM, these rights are more valuable and 4 they would be willing to pay more from them. 5 JUDGE WISNIEWSKI: From the point of 6 view of SiriusXM. 7 But from the point of view of the 8 record companies on the other side, are those 9 rights necessarily more valuable? 10 THE WITNESS: They have a product that 11 is more valuable if those rights assign to it, all 12 right? That is to say, the demand for their 13 product goes up, and so those rights that they give 14 to them -- they don't have any cost implications of 15 all this, since we're not talking about 16 substitution against other things, but they -- 17 JUDGE WISNIEWSKI: Let me ask you 18 this: If -- and we'll just use a hypothetical if 19 you -- 20 THE WITNESS: Um-hum. 21 JUDGE WISNIEWSKI: -- suppose that 22 there is some right, we'll call it X, which is akin</p>	507	<p>1 whom? Let's -- 2 THE WITNESS: From -- from the label's 3 point of view, a service that offers customization 4 and caching a higher rate than one that doesn't, so 5 that, you know, like, the Slacker has caching and 6 Last.fm doesn't, so Slacker pays a higher rate. So 7 they know that if you give away caching, it's worth 8 more. 9 So they don't have to give a discount 10 to get you to take the caching. You can -- you 11 can -- the world in which your phenomena happens is 12 one in which I have a established valuable product 13 and I'm introducing a new product. And I might 14 give you a discount on the established product in 15 order to buy the new one. 16 JUDGE WISNIEWSKI: Is that necessarily 17 so or isn't it more likely it's a question of 18 taking a bet on -- on what line of product is going 19 to appear more valuable in the future? 20 THE WITNESS: Yeah, but there's no 21 uncertainty here. They already know what the value 22 of the incremental rights are from other licenses</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

508	<p>1 that they already have.</p> <p>2 JUDGE WISNIEWSKI: I'm not quite</p> <p>3 sure I --</p> <p>4 THE WITNESS: We know what they get</p> <p>5 from customization and we know what they get from</p> <p>6 caching.</p> <p>7 JUDGE WISNIEWSKI: Those are the only</p> <p>8 additional rights that we're talking about?</p> <p>9 THE WITNESS: There's three or four,</p> <p>10 but they are all of this character. They're --</p> <p>11 they're not things that are fly-by-night new</p> <p>12 things.</p> <p>13 JUDGE WISNIEWSKI: Okay. Thank you.</p> <p>14 That's all I have.</p> <p>15 CHIEF JUDGE BARNETT: Counsel, any</p> <p>16 follow-up questions based on Judge Wisniewski?</p> <p>17 MR. RICH: None here, Your Honor.</p> <p>18 MR. HANDZO: No, Your Honor.</p> <p>19 MR. FAKLER: No.</p> <p>20 CHIEF JUDGE BARNETT: Now may this</p> <p>21 witness be excused?</p> <p>22 Thank you, Dr. Noll.</p>
509	<p>1 THE WITNESS: Thank you.</p> <p>2 CHIEF JUDGE BARNETT: This is probably</p> <p>3 a good time for us to take our break so the court</p> <p>4 reporter can zap off her material. So we will be</p> <p>5 in recess for five minutes.</p> <p>6 (Whereupon, a brief recess was taken</p> <p>7 from 2:22 p.m. to 2:38 p.m.)</p> <p>8 CHIEF JUDGE BARNETT: Good afternoon.</p> <p>9 Please be seated.</p> <p>10 Mr. Rich, you may call your next</p> <p>11 witness.</p> <p>12 MR. RICH: Thank you.</p> <p>13 Just before, Your Honor, I've been</p> <p>14 absolutely remiss in failing to identify and</p> <p>15 acknowledge my trusty team here, and I want to just</p> <p>16 take a second to do that.</p> <p>17 My partner, Randi Singer; my partner,</p> <p>18 Miranda Schiller -- we're a bit scattered -- my</p> <p>19 associate here, Sabrina Perelman; Mr. Larson, who</p> <p>20 you met, just ducked out.</p> <p>21 And I want to acknowledge general</p> <p>22 counsel of our client, Mr. Donnelly and</p>
510	<p>1 Cynthia Grier of their legal team as well.</p> <p>2 CHIEF JUDGE BARNETT: Okay. Thank you.</p> <p>3 MR. RICH: Thank you very much.</p> <p>4 So we call, as our next witness,</p> <p>5 James Meyer.</p> <p>6 WHEREUPON,</p> <p>7 JAMES E. MEYER</p> <p>8 called as a witness, and having been first duly</p> <p>9 sworn, was examined and testified as follows:</p> <p>10</p> <p>11 DIRECT EXAMINATION</p> <p>12</p> <p>13 BY MR. RICH:</p> <p>14 Q. Good afternoon, Mr. Meyer.</p> <p>15 A. Good afternoon.</p> <p>16 Q. Would you please state your full name</p> <p>17 for the record?</p> <p>18 A. James E. Meyer.</p> <p>19 Q. And by whom are you currently employed?</p> <p>20 A. SiriusXM Radio.</p> <p>21 Q. What's your position there?</p> <p>22 A. President, operations and sales.</p>
511	<p>1 Q. For how long have you held that</p> <p>2 position?</p> <p>3 A. With the new company or --</p> <p>4 Q. With the post merger company.</p> <p>5 A. Since the merger, about -- almost</p> <p>6 four years.</p> <p>7 Q. And before that, were you with which</p> <p>8 company?</p> <p>9 A. I was with Sirius.</p> <p>10 Q. For how long and what position?</p> <p>11 A. I joined Sirius in April of 2004 as</p> <p>12 president of operations and sales, and when the</p> <p>13 companies merged, Mel Karmazin, the CEO, asked me</p> <p>14 to take the new job as president of operations and</p> <p>15 sales for the combined company.</p> <p>16 Q. In the testimony which you have</p> <p>17 submitted and which we'll put before you in a</p> <p>18 little while, you indicate that you have spent</p> <p>19 25 years in the consumer -- in the consumer</p> <p>20 electronics business in various positions; is that</p> <p>21 correct?</p> <p>22 A. Yes.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

512	<p>1 Q. And I take it that one of those</p> <p>2 included a position at Thompson, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. And you, for a time, ran what it called</p> <p>5 its Digital Media Solutions Business Unit?</p> <p>6 A. Yes, you might --</p> <p>7 Q. Can you describe --</p> <p>8 A. -- you might know it better as RCA.</p> <p>9 Q. -- can you describe what that unit did?</p> <p>10 A. Sure.</p> <p>11 RCA Consumer Electronics was a</p> <p>12 combination of the RCA and General Electric brand,</p> <p>13 which sold a wide variety of consumer electronics</p> <p>14 products.</p> <p>15 That company also developed and sold</p> <p>16 digital set-top boxes, satellite radio -- I mean</p> <p>17 satellite television boxes, cable modems, those</p> <p>18 kinds of things.</p> <p>19 I ran the worldwide set-top box</p> <p>20 business for Thompson.</p> <p>21 I also ran all of RCA and</p> <p>22 General Electric's North American consumer</p>	514	<p>1 A. Yes, it is.</p> <p>2 Q. And can you also verify that the</p> <p>3 attached exhibits are those that you reference in</p> <p>4 your written testimony?</p> <p>5 A. Yes, they are.</p> <p>6 MR. RICH: We would like to offer</p> <p>7 Exhibit 5 in evidence at this point.</p> <p>8 MR. DESANCTIS: I would object,</p> <p>9 Your Honor, not to the written testimony, but to</p> <p>10 the exhibits that are attached to the written</p> <p>11 testimony. I couldn't tell if the proffer was for</p> <p>12 everything or just the written testimony.</p> <p>13 JUDGE ROBERTS: It would be helpful if</p> <p>14 you identified yourself, too.</p> <p>15 MR. DESANCTIS: Oh. I apologize. It</p> <p>16 is my first time addressing the Court.</p> <p>17 My name is Michael DeSanctis. I'm at</p> <p>18 Jenner &amp; Block, and I'm one of the lawyers for</p> <p>19 SoundExchange.</p> <p>20 CHIEF JUDGE BARNETT: Nice to meet you,</p> <p>21 Mr. DeSanctis.</p> <p>22 Specifically, what is your objection to</p>
513	<p>1 electronics business.</p> <p>2 Q. Thank you.</p> <p>3 MR. RICH: We're going to distribute to</p> <p>4 Your Honors and to the witness -- what is this</p> <p>5 marked as? -- as SiriusXM Trial Exhibit 5. That's</p> <p>6 identified as the written direct testimony.</p> <p>7 (SiriusXM Trial Exhibit Number 5 was</p> <p>8 marked for identification purposes.)</p> <p>9 MR. RICH: I should complete the</p> <p>10 thought.</p> <p>11 BY MR. RICH:</p> <p>12 Q. Which is a copy of your written direct</p> <p>13 testimony and accompanying exhibits.</p> <p>14 MR. RICH: Thank you, Your Honor.</p> <p>15 BY MR. RICH:</p> <p>16 Q. Mr. Meyer, do you recognize the</p> <p>17 document we've put in front of you as your written</p> <p>18 direct testimony in this proceeding?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Would you turn to the last page.</p> <p>21 please, and verify that the certification bears</p> <p>22 your signature -- the declaration?</p>	515	<p>1 the exhibits?</p> <p>2 MR. DESANCTIS: Well, there are three</p> <p>3 exhibits. The first, which is marked SiriusXM</p> <p>4 Direct Exhibit 3, is a newspaper article from</p> <p>5 newyorktimes.com dated November 15th, 2011.</p> <p>6 The article obviously was not written</p> <p>7 by the Defendant -- I'm sorry -- was not written by</p> <p>8 the witness. It's not -- it's not the witness'</p> <p>9 document. The witness cannot authenticate it. The</p> <p>10 witness cannot vouch for the accuracy of anything</p> <p>11 contained within it, and I cannot cross-examine its</p> <p>12 author.</p> <p>13 So the document is hearsay, and we</p> <p>14 object on those grounds.</p> <p>15 CHIEF JUDGE BARNETT: Response to the</p> <p>16 hearsay objection?</p> <p>17 MR. RICH: The article, Your Honor,</p> <p>18 which is referenced at Paragraph 27 and Note 3 of</p> <p>19 the witness' testimony, is used by Mr. Meyer to</p> <p>20 corroborate and to illustrate a proposition he</p> <p>21 discusses and that we will cover briefly in our</p> <p>22 oral examination; namely, the rapid evolution of</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">516</p> <p>1 so-called connected car technology.</p> <p>2 The New York Times is, obviously, a</p> <p>3 reputable journal of record. As Your Honors are</p> <p>4 aware, we don't strictly follow hearsay rules in</p> <p>5 this tribunal. And 37 CFR 351.10(a) indicates it</p> <p>6 is subject to being admitted to the extent deemed</p> <p>7 appropriate by the Judges.</p> <p>8 It's simply -- it -- again, the witness</p> <p>9 has testified in his written testimony that this is</p> <p>10 consistent with and illustrative of a trend in</p> <p>11 technology with which he is personally familiar,</p> <p>12 and it's on that basis that we've proffered it.</p> <p>13 MR. DESANCTIS: I would respond,</p> <p>14 Your Honor, that this is a situation where I don't</p> <p>15 think it warrants special exemption from the</p> <p>16 general rule that hearsay not be admitted.</p> <p>17 As the -- as counsel testified, it is</p> <p>18 being presented for its truth to support the</p> <p>19 witness' statements. If the witness makes the</p> <p>20 statements, that's fine, but I don't see why this</p> <p>21 document needs to come in.</p> <p>22 JUDGE ROBERTS: Mr. DeSanctis, can you</p>	<p style="text-align: right;">518</p> <p>1 document is simply that; he's simply referring</p> <p>2 to -- the Court to the fact that a document exists.</p> <p>3 But -- and if he wants to discuss it on</p> <p>4 the stand, I think that's fine, but admitting it</p> <p>5 into evidence as evidence, I think, is</p> <p>6 inappropriate.</p> <p>7 JUDGE WISNIEWSKI: Mr. Rich, are you</p> <p>8 offering this for the truth of the matter?</p> <p>9 CHIEF JUDGE BARNETT: I think he said</p> <p>10 he was offering it as illustrative.</p> <p>11 Didn't you say you were offering it as</p> <p>12 illustrative of his testimony?</p> <p>13 MR. RICH: As illustrative of the</p> <p>14 testimony, yes, exactly. As -- as -- this is --</p> <p>15 this is -- the witness cites it, Your Honor and</p> <p>16 Judge Wisniewski, in Footnote 3, saying The</p> <p>17 New York Times is confirming what I know to be</p> <p>18 true, which is, and provides an example of MOG</p> <p>19 being adopted in BMW automobiles.</p> <p>20 Yes, yes, the content, is, I think --</p> <p>21 there's every reason to believe it's reliable, and</p> <p>22 this witness can attest to it from firsthand</p>
<p style="text-align: right;">517</p> <p>1 tell us of other proceedings that we've had that</p> <p>2 you're familiar with where we excluded reports or</p> <p>3 magazine articles or trade press or releases that</p> <p>4 are attached as exhibits on the grounds that you're</p> <p>5 alleging?</p> <p>6 MR. DESANCTIS: Well, I think, by and</p> <p>7 large, experts tend to look at these kinds of</p> <p>8 things, and I know that they have -- these kinds of</p> <p>9 documents have come in many, many times in past</p> <p>10 proceedings in this Court through experts.</p> <p>11 Honestly, as I -- as I stand here right</p> <p>12 now, I -- I do not recall a situation where a fact</p> <p>13 witness proposed a -- a blog report being admitted</p> <p>14 or not admitted.</p> <p>15 JUDGE ROBERTS: If Mr. Meyer had just</p> <p>16 simply, in his testimony, referenced this, perhaps</p> <p>17 in a footnote, would you have had an objection</p> <p>18 then?</p> <p>19 MR. DESANCTIS: No, and I think that's</p> <p>20 very different.</p> <p>21 JUDGE ROBERTS: Why?</p> <p>22 MR. DESANCTIS: Because citing a</p>	<p style="text-align: right;">519</p> <p>1 experience.</p> <p>2 JUDGE WISNIEWSKI: Are you offering it,</p> <p>3 then, for our convenience so that we wouldn't have</p> <p>4 to go through the records of The New York Times?</p> <p>5 MR. RICH: Very much so, Your Honor.</p> <p>6 We can do it indirectly, as you</p> <p>7 suggest, or we can do it, you know, for your</p> <p>8 convenience right here directly.</p> <p>9 JUDGE WISNIEWSKI: Mr. Rich, I don't</p> <p>10 mean to take to you task. You just hit the magic</p> <p>11 buzzer.</p> <p>12 Over the last six years, I have issued</p> <p>13 this correction from the Bench innumerable times,</p> <p>14 but I am still addressed as Judge Wisniewski. And,</p> <p>15 again, I'm not picking on you. That's true of</p> <p>16 everybody in these proceedings, witnesses,</p> <p>17 attorneys and the like.</p> <p>18 MR. RICH: My apologies.</p> <p>19 JUDGE WISNIEWSKI: The pronunciation</p> <p>20 that I prefer is Wisniewski, and if we can stick</p> <p>21 with that for the rest of this proceeding, that</p> <p>22 would be great. If we get as far as tomorrow, that</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">520</p> <p>1 would be even better.</p> <p>2 MR. RICH: I came to this proceeding</p> <p>3 with that pronunciation and heard it pronounced</p> <p>4 otherwise, and I miscorrected myself.</p> <p>5 Thank you.</p> <p>6 JUDGE WISNIEWSKI: Thank you.</p> <p>7 CHIEF JUDGE BARNETT: We're going to</p> <p>8 take a brief recess --</p> <p>9 MR. FAKLER: I'm sorry, Your Honor.</p> <p>10 May I just very briefly chime in on this topic?</p> <p>11 Not to shock anyone, I would only like</p> <p>12 to add for you just very briefly that typically, in</p> <p>13 a court proceeding where there was a hearsay rule,</p> <p>14 which isn't strictly applicable in these</p> <p>15 proceedings, things like newspaper articles,</p> <p>16 New York Times articles, frequently come in under</p> <p>17 the hearsay catch-all exception. New York Times</p> <p>18 certainly is a publication of note and record.</p> <p>19 And, also, in these proceedings, when</p> <p>20 the -- when the direct testimony has been on file</p> <p>21 and served for many months, if there was any</p> <p>22 question as to the authenticity of these documents,</p>	<p style="text-align: right;">522</p> <p>1 worse in this case.</p> <p>2 This is a video copy of two television</p> <p>3 commercials that, again, are -- for which this</p> <p>4 witness can't vouch for its authenticity, for which</p> <p>5 this witness can't vouch for the truth of what's in</p> <p>6 it.</p> <p>7 We can't cross-examine -- we don't even</p> <p>8 know -- at least with the article, we know who made</p> <p>9 it and where we can get it. We don't even know who</p> <p>10 made these commercials or where these statements</p> <p>11 came from.</p> <p>12 And I think even more so in this case,</p> <p>13 the admission of these into evidence as evidence</p> <p>14 that can be cited in findings as fact is</p> <p>15 inappropriate for the same reasons as the last</p> <p>16 exhibit.</p> <p>17 MR. RICH: Your Honors, these are two</p> <p>18 television advertisements which are referred to at</p> <p>19 the beginning of Page 14 of Mr. Meyer's testimony,</p> <p>20 once again, on the subject of connected car</p> <p>21 technology.</p> <p>22 And, frankly, on the premise that</p>
<p style="text-align: right;">521</p> <p>1 they could have been raised long ago and -- and,</p> <p>2 you know -- so I just wanted to put those two</p> <p>3 points out there.</p> <p>4 CHIEF JUDGE BARNETT: Thank you.</p> <p>5 (The Judges confer.)</p> <p>6 CHIEF JUDGE BARNETT: Please be seated.</p> <p>7 Thank you for your patience.</p> <p>8 As most of you know, we're still</p> <p>9 getting to know each other, so it's always helpful</p> <p>10 to confer.</p> <p>11 The objection is overruled, and</p> <p>12 Exhibit 3 to the written direct testimony of</p> <p>13 Mr. Meyer will be included in the record as an</p> <p>14 exhibit.</p> <p>15 (SiriusXM Trial Exhibit Number 5 was</p> <p>16 admitted into evidence.)</p> <p>17 MR. RICH: Thank you, Your Honor.</p> <p>18 MR. DESANCTIS: My objection was</p> <p>19 actually to all of the exhibits, though I only got</p> <p>20 to address the first.</p> <p>21 The argument on Exhibits 4 and 5 is --</p> <p>22 is similar, but I think the facts are even sort of</p>	<p style="text-align: right;">523</p> <p>1 often, a picture tells a thousand words, in this</p> <p>2 case, a moving picture, we were only -- we were</p> <p>3 proposing to play one of them today all of 30</p> <p>4 seconds because it shows in visualized format the</p> <p>5 increasing integration of the technology that we're</p> <p>6 discussing here in the dash.</p> <p>7 And, again, this is a witness who lives</p> <p>8 and breathes this and interfaces with the OEMs</p> <p>9 every day of his career. And, certainly, I don't</p> <p>10 think there's any issue as to the authenticity of</p> <p>11 what's there.</p> <p>12 Again, it's -- it supplements the</p> <p>13 witness' testimony. I don't think anyone looking</p> <p>14 at it, other than creating a little bit of</p> <p>15 entertainment at this late hour of the day and</p> <p>16 finding that of a bit of a relief, would reasonably</p> <p>17 find any lack of plausibility to its content.</p> <p>18 It is a representation -- the one we</p> <p>19 propose to show is the Toyota version. which is</p> <p>20 simply a representation of some integration into</p> <p>21 the dash of the technology today.</p> <p>22 Again, Mr. Meyer could sit here and</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

524	<p>1 describe it and verbally paint that picture. We 2 thought that we would provide a real-life snapshot 3 through these vehicles -- no pun intended -- of 4 what it looks like. That's what they're being 5 offered for. 6 JUDGE ROBERTS: This is a Toyota 7 commercial of wide distribution? 8 MR. RICH: Yes. 9 JUDGE ROBERTS: And how did you get 10 ahold of this copy? 11 MR. RICH: Can I defer to one of my 12 colleagues? 13 MS. PERELMAN: We got it on YouTube. 14 JUDGE ROBERTS: YouTube? 15 CHIEF JUDGE BARNETT: That makes it 16 authentic. 17 MR. RICH: I don't think there's any 18 question as to its authenticity. 19 MR. DESANCTIS: If I could just respond 20 briefly, the issue is not so much its authenticity, 21 although that can't be tested either, but the issue 22 is television ads are -- are full of puffery,</p>	526	<p>1 you can put something in at that time if you took 2 umbrage with the representations that were made. 3 MR. DESANCTIS: That's true. 4 CHIEF JUDGE BARNETT: The objection is 5 overruled. We'll allow the video. 6 MR. RICH: Thank you. 7 BY MR. RICH: 8 Q. Mr. Meyer, would you please describe 9 for the Court your main responsibilities as 10 president of operation and sales? 11 A. Yes. 12 My main responsibilities fall on three 13 areas: Number 1, all of the technology areas of the 14 company report directly to me, that being 15 fundamentally our engineering for both the 16 development of our platforms for satellite radio as 17 well as our broadcast networks, our satellite 18 networks and our terrestrial networks. That's one 19 group. 20 The second group that reports to me is 21 all of our sales and marketing initiatives. I 22 think probably the key group in there that we would</p>
525	<p>1 they're made by marketing executives, and -- and we 2 simply have no basis to ask whoever made these 3 statements whether -- whether -- you know, whether 4 this is puffery, whether the statements are 5 actually true, whether what they're saying is -- 6 can be put in their dashboard, is really as good as 7 they're saying, whether it's really as ubiquitous 8 as they're saying. 9 We all know that, unfortunately, many 10 times, the truth is -- is somewhat different 11 from -- from advertisements. 12 CHIEF JUDGE BARNETT: I was just going 13 to ask, Mr. DeSanctis, isn't the essence of 14 advertising puffery, and wouldn't that go to the 15 weight of it if it's admitted? 16 MR. DESANCTIS: Well, if it could be 17 crossed, Your Honor, yes. The problem with this is 18 that I can't cross its author or its director or 19 its writer. And so if it goes into evidence, we're 20 stuck with it. 21 JUDGE ROBERTS: Well, you have a 22 rebuttal phase, Mr. DeSanctis, so I would assume</p>	527	<p>1 be most interested in is all of the customer -- the 2 people that call on the OEM car companies report 3 directly to me. 4 And then the third area is all of our 5 customer facing operations report directly to me. 6 So all the people that deal with our 7 22-and-a-half million subscribers on daily, monthly 8 and yearly basis report in to me as well. 9 JUDGE WISNIEWSKI: Is that your 10 euphemism for customer service? 11 THE WITNESS: I'm sorry, sir? 12 JUDGE WISNIEWSKI: Is that your 13 euphemism for customer service? 14 THE WITNESS: Yes, sir. 15 BY MR. RICH: 16 Q. How familiar are you in this capacity 17 and given those responsibilities with the 18 competitive environment in which Sirius operates? 19 A. I feel I'm very -- I'm very 20 knowledgeable -- 21 Q. Is there anyone in the company, without 22 being modest, that knows more about it than you?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

528	<p>1 A. No.</p> <p>2 Q. Now, as the first fact witness</p> <p>3 appearing on behalf of SiriusXM, would you take</p> <p>4 several minutes, please, to briefly describe the</p> <p>5 nature of the business in which SiriusXM engages?</p> <p>6 A. We are in the subscription radio</p> <p>7 business, and we get the majority of our revenue</p> <p>8 through subscriptions that are paid by end users,</p> <p>9 being consumers. A small portion of our revenue</p> <p>10 comes from advertising.</p> <p>11 Today, we have -- at the end of the</p> <p>12 first quarter, we had 22.3 million subscribers. If</p> <p>13 you went back five years ago, the bulk of those</p> <p>14 subscribers, new subscribers coming into our</p> <p>15 business, came through what we would call the</p> <p>16 aftermarket. And Your Honors would recognize that</p> <p>17 as buying a radio at a Best Buy or a RadioShack.</p> <p>18 That business has dropped very, very</p> <p>19 significantly as the carmakers have incorporated</p> <p>20 the technology and the hardware into the vehicles.</p> <p>21 And today, close to 90 percent of our new</p> <p>22 subscribers come from when they buy a new car.</p>	530	<p>1 So it's -- it's a network of a national</p> <p>2 satellite footprint supplemented with ground-based</p> <p>3 terrestrial repeaters.</p> <p>4 Q. I believe you just said there are two</p> <p>5 satellite networks that are currently maintained by</p> <p>6 the company?</p> <p>7 A. Yes, sir.</p> <p>8 Q. So why, if the company is combined into</p> <p>9 one, are you maintaining two separate networks?</p> <p>10 A. If you go back 10 years ago, 12 years</p> <p>11 ago or longer, when the companies were formed, the</p> <p>12 companies took two very different technical</p> <p>13 approaches.</p> <p>14 The founders of XM believed in a</p> <p>15 satellite technology called geostationary, meaning</p> <p>16 the satellites sit in a permanent location and move</p> <p>17 as the earth moves so that they're always in one</p> <p>18 location as you move in relation to the earth.</p> <p>19 The Sirius founders believed they had a</p> <p>20 better technology, which is called HEO technology.</p> <p>21 That technology is a much more complicated</p> <p>22 technology. It's -- it's a technology, for</p>
529	<p>1 So that's kind of the -- the way things</p> <p>2 have shifted.</p> <p>3 We obviously deliver close to 100 --</p> <p>4 150 channels of entertainment, music, sports, talk,</p> <p>5 news, special interest programming. We think we</p> <p>6 have something for everybody. And, quite frankly,</p> <p>7 that's what people pay us for, is the breadth of</p> <p>8 our content.</p> <p>9 Q. How do you deliver that product to the</p> <p>10 consumer?</p> <p>11 A. We deliver that content through a</p> <p>12 North American-based satellite system. We actually</p> <p>13 have two in place, one that was legacy from the XM</p> <p>14 company, one that's legacy from the Sirius company.</p> <p>15 And each of those satellite-based</p> <p>16 systems are beefed up, as you might say, with a</p> <p>17 ground-based terrestrial system, meaning that in</p> <p>18 areas where you can't see the satellite -- a big --</p> <p>19 good example being Manhattan, where the buildings</p> <p>20 would block you. When you're on 6th Avenue in</p> <p>21 Manhattan, you're actually getting our signal from</p> <p>22 a -- a ground-based terrestrial repeater.</p>	531	<p>1 instance, the Government uses in lots of its</p> <p>2 classified kinds of operations.</p> <p>3 Each has their strengths and</p> <p>4 weaknesses. The issue today is that both of them</p> <p>5 now have been deployed for several years, both of</p> <p>6 them have a large subscriber base, both of them</p> <p>7 have deployment promises on that technology that</p> <p>8 will go on for many, many years.</p> <p>9 And so we have not been able to, nor do</p> <p>10 I think we will be able to, consolidate those</p> <p>11 networks in any foreseeable future.</p> <p>12 JUDGE ROBERTS: Mr. Meyer, if I recall</p> <p>13 correctly from the last proceeding, Sirius'</p> <p>14 satellites were in the hemispheres, correct, rather</p> <p>15 than geostationary?</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 JUDGE ROBERTS: Okay. That's still the</p> <p>18 case now?</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 JUDGE ROBERTS: All right.</p> <p>21 BY MR. RICH:</p> <p>22 Q. How many satellites altogether are up</p>

# Capital Reporting Company

## Determination of Rates and Terms 06-06-2012 - Vol. II

532	<p>1 there?</p> <p>2 A. A whole lot. Today in the XM</p> <p>3 constellation, there are four, of which two are</p> <p>4 dying.</p> <p>5 In the Sirius constellation, there are</p> <p>6 four, of which three are dying. One is brand-new;</p> <p>7 one more will be launched late this year; and then,</p> <p>8 in addition, there's one satellite that is in orbit</p> <p>9 but is not turned on and operates as an in-air</p> <p>10 spare for either XM or Sirius, should there be a</p> <p>11 problem.</p> <p>12 Q. When you say satellites are dying, what</p> <p>13 do you mean?</p> <p>14 A. It means the satellites have limited</p> <p>15 life. We just wish we could predict what it was.</p> <p>16 But, inevitably, they run out of fuel or they run</p> <p>17 out of power. When they do, they have to be</p> <p>18 replaced.</p> <p>19 And so because that math is difficult</p> <p>20 to predict, you end up -- you end up putting</p> <p>21 replacement assets up there well before the current</p> <p>22 assets expire.</p>	534	<p>1 If you look at the power of these new</p> <p>2 networks that are being built -- and you read about</p> <p>3 them all the time in the paper today. They're</p> <p>4 called, sometimes, fourth generation, 4G, or</p> <p>5 sometimes they're called LTE; they're both the</p> <p>6 same -- these are very, very powerful new wireless</p> <p>7 networks that are being put in place that are going</p> <p>8 to allow a plethora of many services and many new</p> <p>9 capabilities that simply didn't exist five years</p> <p>10 ago.</p> <p>11 Included in that, by the way, is</p> <p>12 several new competitors who compete with me in the</p> <p>13 audio and the satellite -- in the radio business.</p> <p>14 Q. When you say "included in that," who do</p> <p>15 you have in mind?</p> <p>16 A. Pandora, MOG, Slacker, I mean --</p> <p>17 Spotify, those types of companies --</p> <p>18 Q. What makes --</p> <p>19 A. -- Last.fm, iHeartRadio. It's a long</p> <p>20 list.</p> <p>21 Q. What makes them competitors and how are</p> <p>22 they competitors?</p>
533	<p>1 Q. And what does it cost, roughly, from</p> <p>2 conception to launch to develop and deploy a new</p> <p>3 satellite?</p> <p>4 A. Each satellite is about \$300 million.</p> <p>5 Q. Now, as you're aware, sir, the last</p> <p>6 proceeding involving these parties occurred here in</p> <p>7 2007, and a record was developed around that time.</p> <p>8 To get into our conversation, from your</p> <p>9 perspective, what have the largest changes been to</p> <p>10 the satellite radio business over the past</p> <p>11 five years?</p> <p>12 A. The biggest change in my mind is the</p> <p>13 competitive landscape. The amount of competition</p> <p>14 that's coming, particularly based on IP technology</p> <p>15 or, for some us that are more simple, meaning using</p> <p>16 your smartphone to receive services wirelessly no</p> <p>17 matter where you are, is simply overwhelming. And</p> <p>18 the degree that it's moving is simply overwhelming.</p> <p>19 If you look at just how many</p> <p>20 smartphones are in Americans' hands today, even</p> <p>21 versus four years ago, I believe that number has</p> <p>22 risen by almost 100 million.</p>	535	<p>1 A. Their business models vary, Pandora</p> <p>2 being, perhaps, what I would call the simplest and,</p> <p>3 by far, the biggest. In fact, while I was waiting</p> <p>4 to prepare today, Pandora put out their release</p> <p>5 today that said as of the end of May, they have</p> <p>6 53 million active listeners, which is an</p> <p>7 extraordinary number if you compare it to when</p> <p>8 these proceedings were held five years ago. And my</p> <p>9 guess is it was close to zero.</p> <p>10 Pandora has a free music-only service</p> <p>11 that they deliver to customers. It allows you to</p> <p>12 get a variety of stations, as well as to be able to</p> <p>13 customize whatever those stations might be to your</p> <p>14 own listening preference.</p> <p>15 They go all the way to Spotify, which</p> <p>16 offers a free entry-level series of stations and</p> <p>17 services to -- for a fee to have all the music you</p> <p>18 want, basically any way you want it, for a monthly</p> <p>19 fee.</p> <p>20 Q. Okay. So we've established that you've</p> <p>21 got this wonderful phenomenon of these 100 million</p> <p>22 smartphones, and a lot of people listening to</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

536	<p>1 services like Pandora, but now connected up to your 2 business, and to the fact that you're mainly in the 3 business, I take it, of delivering high-quality 4 content into moving automobiles. 5 What's the relationship? 6 A. So I think that the great news for us 7 is that we're firmly entrenched in the automobile. 8 And the most scary news for me going forward is 9 we're firmly entrenched in the automobile. 10 Q. Why don't we pause there, and why don't 11 you unpack that and explain to the Judges what you 12 mean by that? 13 A. So the biggest change that's occurred 14 in the last couple of years is a phenomena that is 15 -- the way to think about it is it's a relatively 16 simple piece of software that has been developed 17 by -- the first one was developed by Microsoft, and 18 it's called SYNC. 19 There are other ones. Toyota has one 20 called Entune, which is a piece of software that 21 does fundamentally the same thing. 22 This piece of software is relatively</p>	538	<p>1 called Entune. This is an ad Toyota commissioned 2 to have run, and they ran it, I can assure you, on 3 many, many venues. 4 Q. Why don't we run it, and then perhaps 5 you could comment on what the Judges will have 6 observed. 7 A. Sure. 8 (The commercial was viewed.) 9 JUDGE ROBERTS: I have seen this 10 commercial. 11 MR. RICH: Thank you. 12 THE WITNESS: If you watched any 13 basketball games in the last four months, I 14 guarantee you've seen it a lot. 15 So what -- what's key about this piece 16 of technology and what I like about this ad is it 17 makes it very simple to understand. It's -- prior 18 to this piece of technology, if you wanted to use 19 your cell phone to get a service, it sat on your 20 seat and, if you wanted to change it, you had to 21 reach over and operate it this way (indicating), 22 and the Pandora screen or whatever service you</p>
537	<p>1 light. It resides in the head unit of the 2 automobile, so the -- the purchaser of an 3 automobile has no idea it's there. And basically 4 what it does is it turns your wireless device, 5 whether that might be your cell phone or your iPad, 6 into nothing more than a transmitter, so that any 7 services you choose to want -- let's take the 8 example of Pandora, okay? You transmit it through 9 your wireless device. But this new piece of 10 software lets it show up on your dashboard like 11 it's always been there and built in. 12 Most importantly, most importantly, it 13 also allows the driver of the vehicle to control 14 that device from the steering wheel or from the 15 controls on the dashboard, much like it controls 16 the FM radio or satellite radio today. 17 Q. Why don't we -- taking that cue, why 18 don't we queue up one of the two exhibits -- is 19 this Number 4? -- 5, I guess it is, which is the 20 Toyota commercial -- 21 A. Right. 22 Toyota has introduced a new technology</p>	539	<p>1 chose would show up here. 2 With this new piece of software, it 3 takes that service, which is here (indicating), and 4 displays it on your dashboard so that now, you 5 don't really know where it came from, you just know 6 it's there; and, more importantly, you can use it 7 very, very easy. And that's the big change coming. 8 BY MR. RICH: 9 Q. Okay. And so what for your business? 10 A. So to me, and what worries me is the 11 most is, again, a series of things: Number 1, this 12 is a very easy business to get into if you're a 13 service provider. And by that, I mean, if you look 14 at our business, where we've had to invest -- we've 15 invested billions of dollars to build our network. 16 launch the satellites, operate the ground 17 repeaters, and all of those things, billions, okay? 18 We've spent billions incentivizing the 19 automakers to take away the hardware costs of the 20 physical costs of a satellite radio to deploy it 21 within their vehicles and give them further 22 incentives to stay focused on it.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

540	<p>1 In this world, all of the investments</p> <p>2 are either being made by Verizon or AT&amp;T or</p> <p>3 T-Mobile, who are building the networks, or they're</p> <p>4 being made by Apple or Samsung or Motorola, whoever</p> <p>5 chooses to build these devices, to bring these</p> <p>6 devices to subsidize them.</p> <p>7 And the people that are offering</p> <p>8 services on these devices don't have any of the</p> <p>9 investment of building the network or subsidizing</p> <p>10 the hardware or selling the hardware, which --</p> <p>11 which I do.</p> <p>12 Q. So you have a cost disadvantage, you're</p> <p>13 saying --</p> <p>14 A. Yes.</p> <p>15 Q. -- but now come at this from the</p> <p>16 consumer perspective.</p> <p>17 How is this relevant to your -- your</p> <p>18 target consumer base?</p> <p>19 A. So if you look at our product today, we</p> <p>20 have about 150 channels, and sometimes it's a</p> <p>21 little less, sometimes it's a little more. That's</p> <p>22 all we're going to be able to do.</p>	542	<p>1 to say, I do like classic rock, but I don't like</p> <p>2 these certain artists in classic rock. I do like</p> <p>3 '60s, but I don't like these kinds of '60 music.</p> <p>4 And pretty soon, it -- it creates a channel that's</p> <p>5 customized for you.</p> <p>6 I cannot do that with our technology.</p> <p>7 Q. But in your testimony, you talk about</p> <p>8 evolving consumer taste and appetite and demand for</p> <p>9 technology product and for interfaces.</p> <p>10 Can you talk a little bit more about</p> <p>11 that and how that relates to what you've been</p> <p>12 discussing?</p> <p>13 A. Sure.</p> <p>14 So, first of all, I believe consumers</p> <p>15 behave in a -- they don't just jump overnight to</p> <p>16 anything new. But what I do know and I've watched</p> <p>17 is what they do at home. And what they do at</p> <p>18 home -- and I would bet Your Honors are the same</p> <p>19 way -- is that when you look at the way you consume</p> <p>20 video today, I bet most of you have a DVR, I bet</p> <p>21 most of you time shift your content, and I bet most</p> <p>22 of you watch it when you want to watch it, and you</p>
541	<p>1 Your Honors, we may be able to do 10</p> <p>2 more channels, even 15 more channels, maybe even a</p> <p>3 tiny bit more, but we're never going to be able to</p> <p>4 do hundreds more.</p> <p>5 Q. Is that the technology constraint?</p> <p>6 A. Yes.</p> <p>7 The first thing about these devices is</p> <p>8 there's no constraint to how many channels a</p> <p>9 service can offer, none.</p> <p>10 The second drawback of our service is</p> <p>11 our system was designed to broadcast one -- I mean</p> <p>12 many -- one thing to many. By that, we have a very</p> <p>13 certain set of content, our channels; we broadcast</p> <p>14 them to very, very large audiences.</p> <p>15 These devices, because they're two-way,</p> <p>16 allow a service to begin with a one-to-many type of</p> <p>17 product, but then very quickly customize that</p> <p>18 service individually to you, with Pandora being a</p> <p>19 great example.</p> <p>20 It allows to you start out saying, hey,</p> <p>21 I like '70s, '60s and '80s music, and I like</p> <p>22 classic rock, and very quickly within those venues</p>	543	<p>1 watch what you want to watch.</p> <p>2 And independent of what CBS says you</p> <p>3 might want to watch on Tuesday night, you've</p> <p>4 decided what you want to watch on Tuesday night.</p> <p>5 And that device allows you to do it.</p> <p>6 These devices allow you to do that with</p> <p>7 your audio radio business in the car.</p> <p>8 Q. What are the price points and how do</p> <p>9 they compare to your own?</p> <p>10 A. Obviously, the -- the toughest one is</p> <p>11 Pandora, which is free. Pandora does have a</p> <p>12 subscription tier. Very few people subscribe to</p> <p>13 it.</p> <p>14 By the way, that tier is very, very low</p> <p>15 cost. I think the last time I checked, it's 3 or</p> <p>16 \$4 a month. And it varies, then, Mr. Rich, all the</p> <p>17 way up to there are services offered for \$10 a</p> <p>18 month and \$15 a month.</p> <p>19 Q. What's the rate of adoption of</p> <p>20 technology of the type that we illustrated in this</p> <p>21 commercial?</p> <p>22 A. So the technology that's described in</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

544	<p>1 that commercial is still just beginning to roll 2 out. And the one thing that you learn when you're 3 in my business is that the carmakers, despite the 4 image they give people, move very slow with 5 adopting new technology. But once they decide to 6 adopt it, they stay on it and they deploy it. 7 They have decided -- and it began with 8 Ford and -- and Ford implementing what they called 9 SYNC, the services SYNC -- I know you had to have 10 seen it advertised. It was very, very heavily 11 promoted -- they have all decided that that's a 12 feature that end users of automobiles want, and not 13 having it will result in them being at a 14 disadvantage to selling their cars. 15 Q. What is SYNC? 16 A. SYNC is that little simple piece of 17 software in the case of Ford that allows this 18 device to seamlessly sync up with the dashboard 19 that's in your car. 20 Today, we're in the early stages of 21 that technology being deployed, but what I can tell 22 you is it's escalating very, very quickly.</p>	546	<p>1 one driver of it is automatic crash notification. 2 You know, automakers today are moving 3 down a path that basically says, I want the 4 capability in a vehicle where, if that vehicle is 5 in an accident of some kind, I want it to be able 6 to directly call out and inform the first 7 responders where it is, what condition it's in, 8 what speed it was going, did the airbags deploy, 9 how many passenger -- 10 Q. Sort of like an OnStar kind of system? 11 A. Very much so. 12 What I can tell you today is, in this 13 case, the other thing about the tethered technology 14 which is very attractive to the automaker is it 15 costs him virtually nothing to deploy it. 16 In the case of the embedded technology, 17 someone is going to pay for that modem to be 18 embedded in the vehicle. 19 A good example is the -- the end user 20 of safety and security services today are beginning 21 to subsidize the automaker to build those things in 22 their vehicles to get that service going.</p>
545	<p>1 And by, certainly, 2015-2016, I believe 2 that anywhere between 65 and 80 percent of the new 3 vehicles being built in this country will contain 4 this technology. 5 Q. Is this the end-all/be-all technology 6 or is this Phase I of a multiphase rollout of it? 7 A. So the new technology has another spin 8 to it, and that is automakers refer to this, 9 actually, as a tethered solution, meaning that the 10 connectivity is brought into the automobile by the 11 consumer, and this piece of software tethers this 12 device to the automobile, making it easy to lose -- 13 easy to use. I'm sorry. 14 Another piece of technology the 15 automakers are betting on heavily is called 16 "embedded." And what embedded is is taking those 17 powerful modems that are in these devices and, 18 instead, embedding them actually in the automobile, 19 but only for those services that the automobile 20 maker deems wanting to have in the vehicle. 21 What is driving those services today is 22 safety and security, okay, and the -- the number</p>	547	<p>1 What I will tell you is an unintended 2 consequence of those embedded modems is they're 3 going to create two very, very interesting 4 phenomenas in the vehicle, both of which are going 5 to provide competition to what I do. And that is, 6 Number 1, if you think about it, when that modem is 7 embedded in the vehicle, it won't be long before 8 that wireless carrier is going to turn that vehicle 9 into a wireless hotspot. 10 And this wireless hotspot is going to 11 be very, very important, meaning when you get in 12 that vehicle and your two 12-year-olds have their 13 iPad -- 12-year-old and 10-year-old have their iPad 14 in the backseat, they're going to be able to watch 15 movies or do whatever they want through those 16 devices through that embedded modem and that 17 embedded hotspot. 18 It's also going to allow the same 19 services that you get tethered, being Pandora or 20 other services, to be integrated more smoothly into 21 the vehicle and delivered that way. 22 Q. Now, as I understand your testimony,</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

548	<p>1 the next phase of embedded means you don't have to 2 bring your smartphone into the car at all. 3 A. That's right. 4 Embedded means the consumer really 5 doesn't have to do anything except opt in for the 6 service. 7 Q. Now, your testimony indicates that 8 there tends to be a reasonably long lead time for 9 automobile manufacturers to develop, incorporate 10 new technology. 11 I think you used an average of 12 something like 155 weeks? 13 A. Yes. 14 Q. How does some of what we've been 15 looking at -- like Phase I, does that involve the 16 same degree of intensive hardware installation, or 17 is the fact that it's mostly software driven going 18 to affect the cycle of adoption on this? 19 A. No. Certainly in the tethered -- in 20 the tethered adoption, because it's all software, 21 the lead time for the automaker is shorter, and he 22 can turn his cycle faster.</p>	550	<p>1 either from the controls in your car or, in a 2 couple of years, from your voice telling it what to 3 do. 4 By -- my opinion, by the '15-'16 time 5 frame, that will be in 70, 80 percent of the new 6 vehicles made. 7 Q. And with respect to the next stage 8 developed, embedded technology, what is your best 9 feedback, information and point of view about the 10 weight and timing of adoption and intensity of 11 adoption of that technology? 12 A. I believe that by, again, maybe a year 13 later, the '16-'17 time frame, about 50 percent of 14 the automakers will also be using that technology 15 to satisfy their safety and security business 16 first -- concerns first. 17 Q. Now, you touched on, a little while 18 ago, certain cost differentials, advantages or 19 disadvantages, as it were, between those who would 20 deploy and compete with Sirius in the adoption of 21 these new technologies and your own. 22 Could you expand on that a little bit,</p>
549	<p>1 In the case of satellite radio or other 2 technologies that -- that are based on physical 3 hardware, you're captive to the hardware cycle the 4 automakers go through, which is typically about 155 5 weeks. 6 Q. So, now, if you'll turn to Paragraph 30 7 of your written direct testimony, please. 8 I want to tie down some of your 9 estimates on adoption and rate of adoption, please. 10 A. Okay. 11 Q. With reference to Paragraph 30, you 12 talk about, I believe, the first type of 13 connectivity in the -- toward the end of that 14 paragraph, is that right, where you talk about an 15 adoption rate by 2015-2016? 16 A. Yes. 17 Q. Can you summarize that? 18 A. Yes. What I'm referring to there is 19 that I believe the tethered technology -- and by 20 that, I mean the tethered technology that not only 21 allows this device using Bluetooth to sync up to 22 your vehicle, but allows it to be used simply,</p>	551	<p>1 please? 2 A. Again -- 3 Q. How do you find yourself -- in what 4 competitive posture are you finding yourself? 5 A. -- again, we've spent billions of 6 dollars to build a nationwide broadcast system that 7 works virtually everywhere in the country. It 8 works in 99.99 something percent of the country. 9 We've spent hundreds of millions of dollars to 10 supplement that with a terrestrial ground station 11 to make sure it works in areas where buildings or 12 mountains or other things might block your way. 13 Okay? 14 For providers who are providing 15 services that we're going to compete with in the 16 next three to five years, they don't have that 17 investment. That investment is being made by 18 Verizon or by AT&amp;T or by T-Mobile to build these 19 new high-speed networks. 20 On top of that, the device needed to 21 deploy that service -- in our case, a physical 22 radio -- actually, you wouldn't recognize it as a</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

552	<p>1 radio. It's a small circuit board and an antenna 2 and a cable. Okay? 3 The cost for that today for most of the 4 automakers is borne by me. I subsidize it to put 5 it in there. 6 In the deployment of these services 7 through these devices, there's no subsidy to the 8 automaker, because the automaker's cost does not go 9 up for these. 10 Q. Changing subjects slightly, at 11 Paragraph 40 of your testimony, you describe the 12 auto industry, in your words, as being on the, 13 quote, slow mend. 14 Do you recall using that terminology? 15 JUDGE ROBERTS: Mr. Rich, before we 16 talk about the automotive industry -- since we've 17 been talking about five years ago, Mr. Meyer, as I 18 recall five years ago, you -- and I don't mean you 19 specifically, but what was then Sirius Satellite 20 Radio -- offered a lot of testimony concerned about 21 the competitive effects of high definition radio, 22 HD radio.</p>	554	<p>1 reliable. It's just for some reason, consumers 2 have not moved as much to the HD portion of 3 terrestrial radio as they have to being -- they 4 seem to be much more enamored and much more driven 5 by new services through these devices. 6 That's not to say -- and I thank you 7 for pointing it out to me -- that they won't. With 8 certain content or certain -- you know, certain 9 offerings in that content, they very well might. 10 It wouldn't be a deployment issue. 11 JUDGE ROBERTS: I'm just struck by that 12 and the fact that HD radio did have the head start, 13 again, since we were talking about it or your 14 company was talking about it actively five years 15 ago. 16 But I'm wondering about, other than 17 your opinion, what you're basing your statements 18 about how that -- the device you have on your desk 19 through your phone is, in fact, going to come out 20 as rapidly and more widely than HD radio ever did. 21 THE WITNESS: So, Your Honor, I can 22 only tell you what I believe, and I'll tell you</p>
553	<p>1 I was struck by the fact that your 2 testimony really doesn't make mention of that at 3 all as a concern for competition. So I'd like to 4 know what happened along those five years that that 5 is no longer a Sirius competitor. 6 THE WITNESS: Your Honor, I don't know 7 if this is politically correct to say, but it's an 8 omission on my part. 9 The cost of HD radio today has dropped 10 to a very, very low number, very, very low number. 11 And HD radio today is also being deployed by many, 12 many automakers. 13 What I can tell you today is it doesn't 14 seem to be getting the same rate of adoption with 15 consumers as the new services are that are deployed 16 through these devices (indicating). 17 I don't know why, but I will tell you 18 HD radio is rolling out, it's in a vast majority -- 19 a lot -- I can't give you the exact number, but -- 20 but many, many new cars built today. 21 Obviously, the service is up and 22 running and, in my opinion, is very strong and very</p>	555	<p>1 what I believe. 2 I believe that satellite radio, for 3 whatever reason, because of the incentives given, 4 whatever, was deployed much faster than HD radio. 5 However, I believe HD radio has many of 6 the same concerns that I have with satellite radio, 7 meaning that it's limited capacity and it has no 8 two-way capability to be personalized, vis-a-vis 9 the terrestrial broadcast. 10 At the same time, these services 11 launched -- and for whatever reason, Pandora today 12 has been -- has been the one that's been adapted 13 the quickest out of that. 14 And, again, I -- I don't know why 15 customers adopted it quicker. They just did. And, 16 you know, I don't think there's any argument when 17 Pandora reports today they have 53 million active 18 listeners. I think that -- that service has begun 19 to move very, very quickly through. 20 My concern with Pandora, Your Honors, 21 is it's already big at 53 million, and it's not 22 available in an easy-to-use way in the car yet. It</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

556	<p>1 will be. It will be in the next two or three 2 years.</p> <p>3 And when it is, I don't think it's a 4 reach to say many of those people who are listening 5 to it today are going to also want to listen to it 6 in the car. And, believe me, it's going to be my 7 job to try to keep my customers from going to them, 8 but that's new competition I don't have today.</p> <p>9 JUDGE ROBERTS: Okay.</p> <p>10 BY MR. RICH:</p> <p>11 Q. Judge Roberts and the witness, if you'd 12 look at your Paragraph 16, please. So the record's 13 clear, there is, in fact, a discussion of HD radio 14 in that paragraph --</p> <p>15 A. Okay. I'm sorry.</p> <p>16 Q. -- you had forgotten.</p> <p>17 MR. RICH: And I think, Judge Roberts, 18 you may just not have picked it up.</p> <p>19 JUDGE ROBERTS: One sentence, yes.</p> <p>20 Quite a contrast.</p> <p>21 MR. RICH: You had indicated it was 22 completely missing, and I just want to be clear it</p>	558	<p>1 mode. And there's no better evidence to me than 2 May.</p> <p>3 You know, auto sales were running along 4 and everyone was talking about an annual rate of 5 auto sales of 14 million and giddy and happy, and 6 they came in at 13.7.</p> <p>7 I have no idea what June is going to 8 be. I have no idea what, you know, various things 9 in the economy in Europe and everywhere else will 10 do to consumers' buyers -- to consumers' desire to 11 buy new cars. And so I'm still cautiously 12 optimistic.</p> <p>13 Q. Turn to Paragraph 64 of your written 14 direct testimony, please.</p> <p>15 You state there that, quote, While we 16 remain bullish about our future, certain key data 17 underscore the challenges we continue to face. And 18 then you go on to describe that.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Could you walk the Judges through that, 22 please?</p>
557	<p>1 is. Point's well-taken, of course.</p> <p>2 BY MR. RICH:</p> <p>3 Q. Paragraph 40 of your testimony, 4 Mr. Meyer, you describe the auto industry as being 5 on the slow mend; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Well, if there has been and continues 8 to be apparent improvement in that industry's 9 performance, why the succeeding cautionary note in 10 your testimony?</p> <p>11 A. So I've been in -- in dealing with the 12 carmakers for a little over eight years, and I am 13 not an expert on the U.S. economy.</p> <p>14 What I can tell you is in that 15 eight years, I've been head-faked more than once on 16 either an improvement in the industry coming and 17 me, along with many others, certainly did not see 18 what was going to happen in the latter half of 2008 19 and 2009 when auto sales went to a level not seen 20 since the early '80s.</p> <p>21 So while I'm cautiously optimistic that 22 auto sales are improving, I'm still in the show-me</p>	559	<p>1 A. Sure.</p> <p>2 So basically, our model is relatively 3 simple. We get new people into our business 4 through trials, and those people fundamentally come 5 into our business when they buy a new car.</p> <p>6 And when they buy that new car, they go 7 through a process that we call "a trial." So that 8 you buy that car, we give you the service for a 9 period of time, some automakers, 90 days; some 10 automakers, six months; some automakers, one year. 11 And during that period, we communicate with you on 12 the value of that service.</p> <p>13 At the end of that trial period, we 14 then tell you you need to pay for it. At that 15 point, we have what we call "conversion," meaning 16 if we gave it to 100 people, how many of that 100 17 converted into a paying customer.</p> <p>18 Today, we're seeing that rate in the 44 19 to 46 percent range. If you went back two or three 20 years ago, that rate was higher.</p> <p>21 Now, there are lots of things that can 22 change that rate and drive it down. My primary</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">560</p> <p>1 concern is it's declining, not rising.</p> <p>2       The second thing that happens to our</p> <p>3 business, which is also very significant, is after</p> <p>4 you convert, you become what's called a self-paying</p> <p>5 customer, and that is evident by what it means. It</p> <p>6 means you're now paying for the subscription as</p> <p>7 opposed to you either got a free trial or some --</p> <p>8 the automaker paid for you to have a free trial.</p> <p>9 Okay?</p> <p>10       There, we lose about 2 percent of our</p> <p>11 customer base a month.</p> <p>12       When you add those two churns together,</p> <p>13 meaning customers who come through a trial and say</p> <p>14 they don't want to subscribe and customers who are</p> <p>15 subscribing and say they no longer want to</p> <p>16 subscribe, we're losing, today, somewhere between</p> <p>17 6- and 700,000 customers a month, which is -- which</p> <p>18 is a number that gets my attention a lot.</p> <p>19       Q. Do you have a strategy for retaining</p> <p>20 customers who want to bail?</p> <p>21       A. Yes.</p> <p>22       So the one thing I can tell you -- as</p>	<p style="text-align: right;">562</p> <p>1 about, you know, in the 15 percent range, and that</p> <p>2 is we make them angry with our service. And there,</p> <p>3 that -- I just wish we could do better. We're</p> <p>4 trying to do a lot better. Trust me, we've spent a</p> <p>5 lot of money to try to do better, and I think we're</p> <p>6 doing better. But you have to ask our customers if</p> <p>7 they think we're doing better. But we are</p> <p>8 committed and working at that.</p> <p>9       And then, finally, the last group just</p> <p>10 has a problem that we just -- either the equipment</p> <p>11 broke or they sold their vehicle or, God forgive,</p> <p>12 they died or -- or we changed one channel and they</p> <p>13 happen to love BBC Rock Radio 1, we took it off,</p> <p>14 and they got furious and they churned out.</p> <p>15       But what I will tell you is that the</p> <p>16 lion majority -- the majority of our customers who</p> <p>17 leave leave for one reason, and that is they don't</p> <p>18 want to pay.</p> <p>19       Where we've been successful in the last</p> <p>20 two-and-a-half years, where we weren't doing it</p> <p>21 prior to the recession hitting -- and I think</p> <p>22 recession has exacerbated some of that -- is that</p>
<p style="text-align: right;">561</p> <p>1 you can imagine, Your Honors, we spend a lot of</p> <p>2 time surveying those customers, talking to those</p> <p>3 customers, putting those customers in -- in groups</p> <p>4 where we can hear what they say, asking them either</p> <p>5 why didn't you convert or why are you now churning</p> <p>6 and -- and -- and not wanting our service.</p> <p>7       I can tell you it almost comes down</p> <p>8 overwhelming to three things: Number 1 -- and this</p> <p>9 will be no surprise to anybody -- about two-thirds</p> <p>10 of them leave for one simple reason, they don't</p> <p>11 want to pay. And what they say is, hey, either</p> <p>12 what I can get from terrestrial radio or what I can</p> <p>13 get from these devices free is good enough for me;</p> <p>14 why am I going to pay you? And so we haven't been</p> <p>15 able to convince them to pay.</p> <p>16       And they either come -- one of two ways</p> <p>17 we see them; they either say I flat out don't want</p> <p>18 to pay or they say, hey, I just don't listen</p> <p>19 enough. And that, to me, is the same as I don't</p> <p>20 want to pay.</p> <p>21       Okay?</p> <p>22       The second reason we lose them is</p>	<p style="text-align: right;">563</p> <p>1 we now go back to those customers on a regular</p> <p>2 basis and say, hey, if you won't pay \$14.49, will</p> <p>3 you pay \$8? Will you pay \$5 a month?</p> <p>4       And we run a variety of tests and,</p> <p>5 today, we're winning back -- you know, a pretty</p> <p>6 significant amount of customers are coming back,</p> <p>7 but they're very price-sensitive customers.</p> <p>8 They're coming back on what I call deeply</p> <p>9 discounted plans, and their duration is still</p> <p>10 questionable how long they will stay when they then</p> <p>11 have to roll back to a higher price plan.</p> <p>12       Q. That phenomenon, can you give some</p> <p>13 order of magnitude to it, subject to being in a</p> <p>14 public courtroom, and also a sense in the longer</p> <p>15 term of what dangers you see that that approach to</p> <p>16 retaining customers has for the company's economic</p> <p>17 viability?</p> <p>18       A. What I'd like to say, with Your Honors'</p> <p>19 concurrence, is I really would prefer, for</p> <p>20 competitive reasons, not to give the number out,</p> <p>21 but I will tell you we've been more successful than</p> <p>22 I thought, which is not necessarily a good thing.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">564</p> <p>1 We're getting a lot of customers to come back on 2 the rates. 3       There's a point where we can't continue 4 to do it, because there's a point where, if you 5 find out you're paying one thing and your friend is 6 paying something else, I don't care whether you 7 think -- you know, you have no trouble affording 8 it. If you find you're being used, you all react 9 the same way, which is I want that rate. 10       So this isn't a sustainable thing. 11 This is an area where we're trying to find in our 12 business who those customers are, how do we keep 13 them in a group of where they are, and how do we 14 keep that from becoming, you know, a -- a -- an 15 epidemic among our true, good subscriber basis. 16       Q. At Paragraph 65 of your written 17 testimony, you cite as another challenge 18 implementation of the first ever price increase 19 effective January 1, 2012. 20       Do you see that? 21       A. Yes. 22       Q. Could you explain your testimony there,</p>	<p style="text-align: right;">566</p> <p>1 increase and we're living with it today. 2       Q. And finally, in a footnote to your 3 testimony, Footnote 17, I believe it is -- yes, at 4 the end of your testimony, your refer to something 5 called the music royalty fee. 6       Can you identify what that is a 7 reference to? 8       A. Yes. 9       So as Your Honors may or may not be 10 familiar, when we were in the middle of getting our 11 merger approved by the FCC, as part of the FCC, we 12 voluntarily agreed to not raise prices for a 13 three-year period; however, the FCC agreed that 14 during that three-year period, we could recover the 15 costs of our music -- of the increase in our music 16 royalties paid during that period. 17       And so just after the merger was 18 approved and we became one company, we put through 19 a music royalty fee, which was intended to recover 20 those royalties. 21       Q. And if you look at the last line of 22 Footnote 17, you write, The presence of the MRF,</p>
<p style="text-align: right;">565</p> <p>1 please? 2       A. Yes. 3       In January of 2012, we actually 4 signaled to our subscriber base that we were going 5 to have our first price increase ever in October of 6 2011. We began notifying customers in late 7 November and December of 2011 that we were raising 8 our rates approximately -- I think it's 12 percent 9 from 12.95 to 14.49 -- \$12.95 a month to \$14.49 a 10 month. 11       And, by the way, again, it's important 12 to point out, about 50 percent of our customers are 13 on annual subscriptions, about 20 percent of our 14 customers are on longer than annual subscriptions, 15 and the remaining 30 are on a monthly or a 16 quarterly. You don't get a price increase until 17 your current subscription runs out. 18       So the true effect of this price 19 increase will take probably 18 to 20 months before 20 we get through our customer base or longer to 21 notify. 22       And we've begun implementing that price</p>	<p style="text-align: right;">567</p> <p>1 meaning the music royalty fee, in addition to our 2 price increase will limit our ability to charge 3 customers additional fees going forward without 4 significant effect on churn. 5       Do you see that? 6       A. Yes. 7       Q. Can you explain your meaning there? 8       A. I have to read it again. I'm sorry. 9       Could you just point it out to me 10 again? 11       Q. The last sentence of the Footnote 17, 12 beginning with The presence of. 13       A. Yes. 14       So I think it's just -- you know, at 15 least for me, it's how much will people pay. And, 16 you know, you can call it a music fee, you can call 17 it whatever you want, but at the end of the day, 18 when I look out at what I'm paying for satellite 19 radio -- today I'm paying \$16 a month, roughly. 20 And, you know, I have my concerns about how much is 21 too much and when customers will not pay. 22       I know today -- again, I want to</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

568	<p>1 repeat -- I know today, when I offer that service</p> <p>2 to new car buyers, whether they ask for satellite</p> <p>3 radio or not, two-thirds of them. only 60 -- only</p> <p>4 44 percent of them subscribe. And the 56 percent</p> <p>5 that didn't, two-thirds of those tell me the reason</p> <p>6 they didn't is they don't want to pay.</p> <p>7 And then when they stay, they churn at</p> <p>8 2 percent a month. Think about that. We turn that</p> <p>9 base over one quarter every year. It's a big</p> <p>10 number. Okay?</p> <p>11 The fundamental reason they leave,</p> <p>12 again, two-thirds of the time, is I don't want to</p> <p>13 pay. And so while I don't have any set research</p> <p>14 that tells me the exact elasticity of our business,</p> <p>15 what I can tell you is there is a concern at some</p> <p>16 point, customers won't pay.</p> <p>17 MR. RICH: Thank you.</p> <p>18 That concludes my direct examination.</p> <p>19 JUDGE ROBERTS: Mr. Meyer, on your</p> <p>20 deeply discounted subscribers --</p> <p>21 THE WITNESS: Yes.</p> <p>22 JUDGE ROBERTS: -- is this something</p>
569	<p>1 you're doing with them just on a monthly basis and,</p> <p>2 if so, do you tell them this is going to expire at</p> <p>3 a certain point? You said that we can't keep on</p> <p>4 doing this forever.</p> <p>5 THE WITNESS: Yes, sir. Our</p> <p>6 fundamental tool is we offer them a bundle. The</p> <p>7 tool we're using today is if you'll come back,</p> <p>8 we'll give you five months for \$30. but we make it</p> <p>9 clear that at the end of the five months, their</p> <p>10 plan is going to roll to a full-price plan.</p> <p>11 JUDGE ROBERTS: Okay. That's what</p> <p>12 you've been talking about as being the deeply</p> <p>13 discounted?</p> <p>14 THE WITNESS: Yes, sir.</p> <p>15 JUDGE ROBERTS: Okay. Thank you.</p> <p>16 MR. RICH: Thank you, Your Honors.</p> <p>17 CHIEF JUDGE BARNETT: Mr. DeSanctis?</p> <p>18 MR. DESANCTIS: Thank you, Your Honor.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
570	<p>1 CROSS-EXAMINATION</p> <p>2</p> <p>3 BY MR. DESANCTIS:</p> <p>4 Q. Good afternoon, Mr. Meyer.</p> <p>5 A. Good afternoon.</p> <p>6 Q. How are you?</p> <p>7 A. Good.</p> <p>8 Q. As you heard earlier, I represent</p> <p>9 SoundExchange.</p> <p>10 You testified a moment ago about the</p> <p>11 number of unique listeners to Pandora as recorded</p> <p>12 in first quarter 2012, correct?</p> <p>13 A. No.</p> <p>14 I -- I -- I quoted -- and, again, I was</p> <p>15 reading it -- their press release today while I was</p> <p>16 waiting for preparation upstairs where they</p> <p>17 announced they had 53 million listeners.</p> <p>18 Q. 53 million listeners today?</p> <p>19 A. Yes. It was in their press release</p> <p>20 today. I have no reason to believe it's not</p> <p>21 accurate.</p> <p>22 Q. Okay. Today, Pandora has only about a</p>
571	<p>1 million subscribers, correct?</p> <p>2 A. I don't know how many paying</p> <p>3 subscribers they have.</p> <p>4 Q. Okay. In your ordinary course of your</p> <p>5 business, Mr. Meyer, are you familiar -- do you</p> <p>6 review the Form 8-Ks that Sirius files with the</p> <p>7 SEC?</p> <p>8 A. Yes, I do.</p> <p>9 (SoundExchange Trial Exhibit Number 6</p> <p>10 was marked for identification</p> <p>11 purposes.)</p> <p>12 BY MR. DESANCTIS:</p> <p>13 Q. I'm showing you what's been marked as</p> <p>14 SoundExchange Exhibit 6.</p> <p>15 Mr. Meyer, I know this is a long</p> <p>16 document, but do you recognize it as SiriusXM Radio</p> <p>17 Inc. Form 10-K filing filed May 22nd, 2012?</p> <p>18 A. 8-K?</p> <p>19 Q. I'm sorry. 8-K. yes.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Are you familiar with this</p> <p>22 document?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

572	<p>1 A. Yes, I am.</p> <p>2 Q. Okay. If I could --</p> <p>3 MR. DESANCTIS: Actually, I'd like to</p> <p>4 offer the document into evidence at this time.</p> <p>5 MR. RICH: We would object at least</p> <p>6 without some connection to the witness' direct</p> <p>7 testimony.</p> <p>8 CHIEF JUDGE BARNETT: Mr. DeSanctis?</p> <p>9 MR. DESANCTIS: The witness testified</p> <p>10 on direct, first of all, to what Pandora's</p> <p>11 current -- how many users there are of Pandora.</p> <p>12 When I asked the witness how many</p> <p>13 subscribers there were, he didn't know. And I'd</p> <p>14 like to -- that figures within this document, and</p> <p>15 I'd like to ask him questions that go to the weight</p> <p>16 of the -- of the figure that the witness gave on</p> <p>17 direct as compared to the figure that SiriusXM's</p> <p>18 giving to its shareholders. It's a very different</p> <p>19 figure and it's very relevant.</p> <p>20 JUDGE ROBERTS: Why do we need the</p> <p>21 whole document, Mr. DeSanctis?</p> <p>22 MR. DESANCTIS: I'm actually going to</p>
574	<p>1 of all, there's a certain irony to their position</p> <p>2 where, six years ago, when we were here litigating</p> <p>3 this case -- or five years ago, whatever it was,</p> <p>4 they were the ones who wanted to get -- put in the</p> <p>5 most current financial documents, because from the</p> <p>6 filing of their case to the time of the hearing,</p> <p>7 their financial fortunes had dipped a little bit,</p> <p>8 so they wanted to get in the most recent</p> <p>9 financials. And in the majority of instances, that</p> <p>10 was permitted.</p> <p>11 Finally, and most importantly, the</p> <p>12 entire thrust of this witness' written testimony</p> <p>13 and the entire thrust of his oral testimony is</p> <p>14 making predictions about penetration of various</p> <p>15 services with respect -- vis-a-vis XM with respect</p> <p>16 to XM's -- SiriusXM's ability to attract</p> <p>17 subscribers in the future, ability to raise prices</p> <p>18 in the future.</p> <p>19 And if the witness' entire testimony is</p> <p>20 predicting the future, then it certainly seems to</p> <p>21 me relevant that I be able to cross him on the most</p> <p>22 recent documentation we have, particularly when</p>
573	<p>1 ask him a lot of questions throughout it.</p> <p>2 MR. RICH: Then I will have an</p> <p>3 objection, renewing the objection I raised</p> <p>4 yesterday, which is this is well outside the scope</p> <p>5 of direct, which, by definition, was constrained by</p> <p>6 the date of the witness' direct testimony, indeed,</p> <p>7 all of our financial proffers to November 29th of</p> <p>8 2011.</p> <p>9 And I don't know that I need to</p> <p>10 rehearse the statements I made yesterday,</p> <p>11 Your Honors.</p> <p>12 MR. DESANCTIS: I would simply respond</p> <p>13 to that quickly. I know this issue was discussed</p> <p>14 yesterday.</p> <p>15 First of all, under the -- under the</p> <p>16 CRJ's rules, cross is limited to issues raised on</p> <p>17 the direct. It is not limited to the time period</p> <p>18 that direct may be naturally limited to because</p> <p>19 there has to be a point in time where one files a</p> <p>20 case. So I think the rules don't support</p> <p>21 Mr. Rich's position.</p> <p>22 More importantly, here -- well, first</p>
575	<p>1 it's SiriusXM's own document. There's no surprises</p> <p>2 here.</p> <p>3 CHIEF JUDGE BARNETT: Excuse us for a</p> <p>4 moment.</p> <p>5 (The Judges confer.)</p> <p>6 CHIEF JUDGE BARNETT: Please be seated.</p> <p>7 Mr. DeSanctis, there's no problem with</p> <p>8 you using this document as a basis for</p> <p>9 cross-examination, but the objection to its</p> <p>10 admissibility at this point is sustained.</p> <p>11 MR. DESANCTIS: Okay.</p> <p>12 BY MR. DESANCTIS:</p> <p>13 Q. Mr. Meyer, let me direct your attention</p> <p>14 to Page 29 of SoundExchange Exhibit 6.</p> <p>15 A. Yes.</p> <p>16 Q. Am I right that this slide shows that</p> <p>17 while SiriusXM has 22.3 million paying subscribers,</p> <p>18 Pandora has 1 million?</p> <p>19 A. That's what this slide shows, yes.</p> <p>20 Q. Okay. And you don't know it to be any</p> <p>21 different, do you?</p> <p>22 A. No.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

576	<p>1 Q. And that is the -- that is the figure</p> <p>2 that SiriusXM chose to -- to show its shareholders.</p> <p>3 correct? That's what this is? This is a</p> <p>4 presentation to shareholders?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let me ask you to flip a few</p> <p>7 pages back to Page 26.</p> <p>8 This -- I'm correct, am I not, that</p> <p>9 this slide shows that in 2012, SiriusXM is showing</p> <p>10 estimated revenue of 3.3 billion, correct?</p> <p>11 A. Analysts are showing that, yes.</p> <p>12 Q. And Sirius is showing that to its</p> <p>13 shareholders?</p> <p>14 A. These charts were put together -- the</p> <p>15 footnote says these are analyst's projections, just</p> <p>16 to be clear.</p> <p>17 Q. But this -- this presentation was</p> <p>18 presented to SiriusXM shareholders by SiriusXM,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And the same slide shows that --</p> <p>22 shows estimated 2012 revenue for Pandora of</p>	578	<p>1 gave in your direct testimony that you said you</p> <p>2 just heard today, that's -- that number is not in</p> <p>3 here, is it?</p> <p>4 A. It just came out today --</p> <p>5 Q. Right.</p> <p>6 A. -- so it is not in here, no.</p> <p>7 Q. But the number as it existed at the</p> <p>8 time this presentation was made is not in here,</p> <p>9 correct?</p> <p>10 A. Not that I -- that I know of, no.</p> <p>11 Q. Okay. One point you make, Mr. Meyer,</p> <p>12 in your written testimony and that you also made</p> <p>13 here in Court is that you're concerned that</p> <p>14 subscribers will leave SiriusXM for Pandora because</p> <p>15 Pandora is free to the user, correct?</p> <p>16 A. I think that's one concern.</p> <p>17 Q. That's one of the reasons. I didn't</p> <p>18 mean to suggest it was the only one.</p> <p>19 But users of Pandora in the car do have</p> <p>20 to pay a significant fee for their mobile data plan</p> <p>21 which allows them to receive the service, correct?</p> <p>22 A. Well, no, I'm not sure that's correct.</p>
577	<p>1 417 million, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Let's look at the next page, 27.</p> <p>4 Am I correct that this slide entitled</p> <p>5 SiriusXM's Superior Revenue Model shows SiriusXM</p> <p>6 subscriber revenue of \$137.69 per subscriber; is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. It shows Pandora revenue of \$5.48 per</p> <p>10 active user; is that correct?</p> <p>11 A. No. \$5.84.</p> <p>12 Q. I'm sorry. I used the wrong number.</p> <p>13 \$5.84 per active user for Pandora,</p> <p>14 correct?</p> <p>15 A. Yes, based on 2011 forecast revenue.</p> <p>16 Q. You can put this aside for the moment.</p> <p>17 A. The exhibits?</p> <p>18 Q. Yes.</p> <p>19 A. Thanks.</p> <p>20 Q. By the way, go back to the exhibit one</p> <p>21 more time. We were looking at Pages 21 through 29.</p> <p>22 The number of active listeners that you</p>	579	<p>1 What -- what is correct is that to be</p> <p>2 able to use a variety of services, users pay for a</p> <p>3 data plan for their phone.</p> <p>4 What is unclear to me is how much of</p> <p>5 that they use for audio and how much would they pay</p> <p>6 anyways for all the other things they use it for,</p> <p>7 whether it be Facebook or -- or e-mail or games or</p> <p>8 video or all the other things they use their data</p> <p>9 plans for.</p> <p>10 So it's hard to say what do they use</p> <p>11 the data plan -- specifically what are they paying</p> <p>12 for is my only point.</p> <p>13 Q. Are you aware of ubiquitous use of</p> <p>14 e-mail and Facebook while driving in the car?</p> <p>15 A. I'm aware that lots of users who have</p> <p>16 wireless devices use those devices outside their</p> <p>17 car in a plentiful way. And when they're outside</p> <p>18 their car, including me, I use it extensively</p> <p>19 sitting in my chair to do e-mail and other things.</p> <p>20 And that's paid for by my data plan.</p> <p>21 Q. And that data plan -- so, again, the</p> <p>22 data plan is paid for by the user of Pandora.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

580	<p>1 correct?</p> <p>2 A. The data plan is paid for by the end</p> <p>3 user.</p> <p>4 Q. Okay. And you would agree, would you</p> <p>5 not, that the networks over which Pandora is</p> <p>6 provided, whether it's 3G or 4G, are inferior to</p> <p>7 the networks that SiriusXM has developed for the</p> <p>8 delivery of streaming music?</p> <p>9 A. I would not.</p> <p>10 Q. You would not.</p> <p>11 Do you know who Steve Cook is?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Do you recall a presentation prepared</p> <p>14 by Steve Cook regarding the assessment of streaming</p> <p>15 Internet audio services to the vehicle?</p> <p>16 A. I'd have to see it.</p> <p>17 Q. Okay.</p> <p>18 A. Can we set this other one to the side</p> <p>19 for right now?</p> <p>20 Q. Yes, you can. Please do. Sorry.</p> <p>21 (SoundExchange Trial Exhibit Number 7</p> <p>22 was marked for identification</p>	582	<p>1 BY MR. DESANCTIS:</p> <p>2 Q. Did he testify in the last proceeding?</p> <p>3 A. I don't know. I'm sorry.</p> <p>4 MR. DESANCTIS: I would offer that this</p> <p>5 document be moved into evidence at this time.</p> <p>6 MR. RICH: No objection.</p> <p>7 CHIEF JUDGE BARNETT: SoundExchange</p> <p>8 Exhibit 7 is admitted.</p> <p>9 (SoundExchange Trial Exhibit Number 7</p> <p>10 was admitted into evidence.)</p> <p>11 BY MR. DESANCTIS:</p> <p>12 Q. Let me draw --</p> <p>13 MR. RICH: Let me remind the examiner</p> <p>14 it is a restricted document. So I don't know where</p> <p>15 you're going with your question, so I would</p> <p>16 appreciate it if you would observe that.</p> <p>17 MR. DESANCTIS: I appreciate that. I</p> <p>18 almost missed that.</p> <p>19 Give me just a minute.</p> <p>20 (Pause.)</p> <p>21 MR. DESANCTIS: It's okay. I'm not</p> <p>22 going to ask any questions about it, then.</p>
581	<p>1 purposes.)</p> <p>2 BY MR. DESANCTIS:</p> <p>3 Q. Showing you what has been marked as</p> <p>4 SoundExchange Exhibit 7, Mr. Meyer. It is a</p> <p>5 multipage document, the first of which bears the</p> <p>6 Bates stamp SXM_CRB_DIR_34101. It is an e-mail</p> <p>7 from Steve Cook to Jim Meyer dated Thursday,</p> <p>8 April 29th, 2010, and it attaches a report.</p> <p>9 You're familiar with this document?</p> <p>10 A. Now that I see it, yes.</p> <p>11 Q. Okay. Was this document -- and I'm</p> <p>12 talking about the report, not the e-mail --</p> <p>13 prepared by Mr. Cook?</p> <p>14 A. Yes.</p> <p>15 JUDGE ROBERTS: Apparently, the two of</p> <p>16 you know who Mr. Cook is, but I don't think we do.</p> <p>17 Who is Mr. Cook?</p> <p>18 THE WITNESS: Your Honor, Mr. Steve</p> <p>19 Cook works for me and is in charge of our OEM</p> <p>20 business.</p> <p>21 JUDGE ROBERTS: Thank you.</p> <p>22</p>	583	<p>1 BY MR. DESANCTIS:</p> <p>2 Q. Let me move to a different topic, then,</p> <p>3 Mr. Meyer --</p> <p>4 JUDGE ROBERTS: Before we do that,</p> <p>5 Mr. DeSanctis, a little context would be helpful</p> <p>6 with respect to this document.</p> <p>7 Mr. Meyer, what is the time frame that</p> <p>8 this was prepared?</p> <p>9 THE WITNESS: Two years ago, a little</p> <p>10 more than two years ago, Your Honor.</p> <p>11 JUDGE ROBERTS: A little more than two</p> <p>12 years ago.</p> <p>13 And what is it exactly?</p> <p>14 THE WITNESS: Your Honor, this was a</p> <p>15 document that was put together to be used</p> <p>16 internally at an off-site meeting of our management</p> <p>17 to -- to discuss what, quite candidly, might be</p> <p>18 some ways to go to the auto companies and try to</p> <p>19 make them aware of some of the limitations</p> <p>20 potentially of this upcoming competition.</p> <p>21 In my mind, a lot of this document, if</p> <p>22 I could be so candid, was puffery.</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">584</p> <p>1 JUDGE ROBERTS: Okay. In looking at 2 it -- I happen to be looking at Page 3, and you 3 have some of your on-air talent identified as 4 exclusive content unraveled by other media sources. 5 Are -- are all these people still on 6 the Sirius system? 7 THE WITNESS: All except for -- I think 8 the first one is Oprah. She looks a little older 9 now. 10 All but Rosie O'Donnell. 11 JUDGE ROBERTS: Rosie O'Donnell is no 12 longer on your service? 13 THE WITNESS: She's no longer with us. 14 JUDGE ROBERTS: Okay, thank you. 15 BY MR. DESANCTIS: 16 Q. The bottom line in your direct 17 testimony, Mr. Meyer, with respect to the emergence 18 of Internet in the car, is that you predict that 19 SiriusXM will be competing in the future with 20 webcasting services like Pandora and Rhapsody, 21 correct? 22 A. Yes.</p>	<p style="text-align: right;">586</p> <p>1 Q. Okay. That's different than SiriusXM? 2 A. SiriusXM does not do that. Our -- our 3 fundamental concept -- and, again, it's where I 4 believe we have a significant competitive 5 weakness -- is we broadcast one thing to many, that 6 core of 60 channels. 7 If you're a satellite listener today 8 and you don't like how we program our '70s channel, 9 you can't change it. If you take Pandora's '70 10 channel and by thumbs up and thumbs down, don't 11 like parts of it, it will create a '70s channel for 12 you. 13 Q. But isn't the skill of your 14 professional programmers something that SiriusXM 15 touts as a plus and a draw? 16 A. Absolutely, that's the argument we 17 make. The argument we make is curation is -- is 18 what people really want. Time will tell. 19 Again, I'm not saying we're going to 20 lose, necessarily. What I'm saying is there is a 21 big new form of competition coming. 22 Q. And if you're afraid of the competition</p>
<p style="text-align: right;">585</p> <p>1 Q. That's the threat that you're concerned 2 about? 3 A. That's one threat. 4 Q. Both SiriusXM and Pandora, for example, 5 are noninteractive, lean-back services, correct? 6 A. SiriusXM is. 7 Q. And Pandora? 8 A. I'm aware of the Pandora core service. 9 I'm not -- I'm actually not aware of how 10 interactive the Pandora subscription service is. 11 I'm sorry. 12 Q. By the "core service," you mean the 13 free-to-user, ad-supported service? 14 A. The free to user -- sorry to interrupt. 15 Q. No; it's okay. It's important that we 16 clarify. 17 And that is a noninteractive, lean-back 18 service, correct? 19 A. It's -- it's semi-interactive. The 20 user has to push buttons that say I like or dislike 21 this service, which is how a unique stream gets 22 created for him or her.</p>	<p style="text-align: right;">587</p> <p>1 or -- I didn't mean that to sound the way it might 2 have -- if you're concerned of the coming 3 competition, is that to say that you see SiriusXM 4 and Pandora as substitutional for one another? 5 A. So -- I'll tell you why it's a reach 6 for me. And my answer is not quite, okay? 7 So that -- today -- I believe that the 8 biggest audience out there that we compete with 9 today is terrestrial radio, where you can easily 10 get music, sports and news and local news by 11 various pushes of your buttons on your radio. 12 Today, Pandora is fundamentally a music 13 service, but that doesn't mean that Pandora coupled 14 with a Slacker app, coupled with mlb.com app on 15 your dashboard doesn't begin to reassemble my 16 service in a very meaningful way. You just happen 17 to package what you wanted out of there, as opposed 18 to me packaging what you might want out of there. 19 So I don't believe that you can define 20 just the threat being Pandora only; it's the apps 21 that, to me, are the threat. 22 Q. Okay. So you view the apps as</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

588	<p>1 substitutional with SiriusXM, correct, or else you</p> <p>2 wouldn't fear the competition, correct?</p> <p>3 A. I believe that there are customers who,</p> <p>4 with the right combination of apps, will not</p> <p>5 subscribe to SiriusXM or will churn out of</p> <p>6 SiriusXM.</p> <p>7 Q. And those apps, that suite of services,</p> <p>8 however we want to refer to them, from whom you</p> <p>9 fear competition and that you see as being</p> <p>10 substitutional for some users do not have the</p> <p>11 exclusive SiriusXM content, like, for example,</p> <p>12 Howard Stern, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Or Oprah Winfrey, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Or any of the other exclusive SiriusXM</p> <p>17 content?</p> <p>18 A. Correct.</p> <p>19 Q. And Pandora substitutes for CD sales,</p> <p>20 correct?</p> <p>21 A. I'm sorry?</p> <p>22 Q. Do you agree that Pandora substitutes</p>	590	<p>1 may have been created a couple of months before</p> <p>2 then.</p> <p>3 Q. And this is a study of the</p> <p>4 characteristics of the use of Pandora not by</p> <p>5 every -- not by the general public, but</p> <p>6 specifically by SiriusXM users, correct?</p> <p>7 A. It was a survey of our users and some</p> <p>8 of our ex-users, both.</p> <p>9 Q. Focusing on their use of Pandora?</p> <p>10 A. Yes.</p> <p>11 MR. DESANCTIS: This document is also</p> <p>12 restricted, so I will be careful not to read from</p> <p>13 it.</p> <p>14 BY MR. DESANCTIS:</p> <p>15 Q. I would like to turn your attention to</p> <p>16 the page -- it's Page 20 of the slide presentation.</p> <p>17 It's Bates numbered 42793 --</p> <p>18 CHIEF JUDGE BARNETT: Before we get</p> <p>19 into the content -- are you offering this into</p> <p>20 evidence?</p> <p>21 MR. DESANCTIS: Yes. I would be happy</p> <p>22 to do that now.</p>
589	<p>1 for CD sales?</p> <p>2 A. I don't know that, no.</p> <p>3 Q. Mr. Meyer, we're handing you what we</p> <p>4 have marked as SoundExchange Exhibit 8. It is a</p> <p>5 multipage document, the first page of which bears</p> <p>6 the Bates stamp SXM_CRB_DIR_42774. It's a</p> <p>7 presentation entitled SiriusXM, Pandora use by</p> <p>8 SiriusXM subscribers, April 2011.</p> <p>9 (SoundExchange Trial Exhibit Number 8</p> <p>10 was marked for identification</p> <p>11 purposes.)</p> <p>12 BY MR. DESANCTIS:</p> <p>13 Q. Do you see the document, Mr. Meyer?</p> <p>14 A. Yes.</p> <p>15 Q. You're familiar with this document?</p> <p>16 A. Yes.</p> <p>17 Q. Did you create it?</p> <p>18 A. No.</p> <p>19 Q. Do you know who did?</p> <p>20 A. I think it was our research group.</p> <p>21 Q. And it was created in April 2011?</p> <p>22 A. It was presented in April of 2011. It</p>	591	<p>1 MR. RICH: No objection.</p> <p>2 CHIEF JUDGE BARNETT: SoundExchange</p> <p>3 Number 8 is admitted.</p> <p>4 (SoundExchange Trial Exhibit Number 8</p> <p>5 was admitted into evidence.)</p> <p>6 CHIEF JUDGE BARNETT: Go ahead,</p> <p>7 Mr. DeSanctis.</p> <p>8 BY MR. DESANCTIS:</p> <p>9 Q. On Page 20 of the slide presentation,</p> <p>10 which is Bates numbered 42793, the text and bullet</p> <p>11 points above the box, does that confirm what we had</p> <p>12 just been talking about regarding the</p> <p>13 substitutionality of Pandora and SiriusXM?</p> <p>14 A. No, I actually don't believe that's</p> <p>15 what this does.</p> <p>16 What this says is just what do they</p> <p>17 listen to. It doesn't speak to whether they're</p> <p>18 substitutable or not.</p> <p>19 JUDGE WISNIEWSKI: I'm sorry. What was</p> <p>20 the question again, Mr. DeSanctis?</p> <p>21 MR. DESANCTIS: My question was whether</p> <p>22 the bullet points on Page 20 confirm the witness'</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">592</p> <p>1 earlier testimony regarding the substitutionality 2 of Pandora and SiriusXM. 3 JUDGE WISNIEWSKI: And your answer? 4 I'm sorry. 5 THE WITNESS: I said what this chart 6 says, Your Honor, is it speaks to -- 7 JUDGE WISNIEWSKI: The question didn't 8 refer to the chart; the question referred to the 9 bullet points. 10 THE WITNESS: I think it refers -- I 11 thought to Number 20 -- does it refer to the bullet 12 points or the data? 13 BY MR. DESANCTIS: 14 Q. The bullet points is what I was 15 referring to. 16 A. The person that prepared this chart -- 17 then that's what it says, yes. 18 Q. So it does -- it does confirm that 19 SiriusXM -- that Pandora substitutes for SiriusXM? 20 A. I'm not trying to be argumentative. 21 The individual that put this chart together wrote a 22 bullet that says, Pandora use takes listening share</p>	<p style="text-align: right;">594</p> <p>1 company by the FCC? 2 A. No; that was a condition we voluntarily 3 accepted as part our merger agreement, but it was 4 contained in the order approving our merger. 5 Q. Okay. The order of the FCC? 6 A. Yes, sir. 7 Q. Okay. So it was -- it was an agreed-to 8 condition? 9 A. It was voluntarily agreed to. 10 Q. Okay. You discussed, however, that -- 11 I believe it was in 2009 that SiriusXM didn't raise 12 its retail prices, but it did begin to impose a 13 music royalty fee -- 14 A. Yes. 15 Q. -- is that correct? 16 And that musical royalty fee passed on 17 the royalties set by the Copyright Royalty Board in 18 2007 to the SiriusXM users, correct? 19 A. Yes. 20 Q. One hundred percent? 21 A. Without going through the actual 22 schedules, I'm not sure exactly how the calculation</p>
<p style="text-align: right;">593</p> <p>1 from SiriusXM. That was their opinion of the data. 2 Q. Okay. And, actually, let me ask you to 3 flip to -- a moment ago before I brought out this 4 document, I asked you whether Pandora substitutes 5 for CDs, and you said you didn't know. 6 On Page 22, Slide 22, which is 7 Page 42795, looking at that now, is it clear to you 8 that the person who prepared this document thinks 9 that Pandora does substitute for CDs? 10 A. Sure. I'm not sure I agree with that. 11 You asked me, not what this document said, okay? 12 Q. And you said you didn't know, but 13 that's what this document says? 14 A. Right. 15 Q. Let me ask you a little about the price 16 increase that you discussed on direct examination. 17 It was -- I think you explained that it was a 18 condition of the Sirius/XM merger -- or I should 19 say the Sirius and XM merger that the company not 20 raise prices for some period of time, correct? 21 A. Yes. 22 Q. And that was a condition placed on the</p>	<p style="text-align: right;">595</p> <p>1 worked. 2 Q. Okay. And from 2009 to 2010 -- 3 JUDGE WISNIEWSKI: Actually, let me 4 stop you there. 5 Mr. Meyer, who would be in a position 6 to, in fact, give us that information if we were 7 interested in it? 8 THE WITNESS: David Frear, our CFO. 9 JUDGE WISNIEWSKI: Okay. 10 THE WITNESS: And, Your Honor, to be 11 clear -- I'd like to be clear. The order stated a 12 very specific way it had to be done. I know we 13 quited often made sure we were absolutely in 14 compliance with that order. What I can't tell you 15 is exactly how the mechanics of that order worked, 16 okay? 17 JUDGE WISNIEWSKI: Thank you. 18 BY MR. DESANCTIS: 19 Q. I'll get you a document on that. 20 A. I'm sorry? 21 Q. I'll get you a document on that. Give 22 me a second.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

<p style="text-align: right;">596</p> <p>1 A. I don't know that it will help.</p> <p>2 Q. I was expecting to get to it later, but</p> <p>3 it seems appropriate to get to it now.</p> <p>4 (SoundExchange Trial Exhibit Number 9</p> <p>5 was marked for identification</p> <p>6 purposes.)</p> <p>7 BY MR. DESANCTIS:</p> <p>8 Q. We will be handing to you momentarily,</p> <p>9 Mr. Meyer, a document that has been marked as</p> <p>10 SoundExchange Exhibit 9 for identification at this</p> <p>11 time. It's entitled 2011 Baseline LRS.</p> <p>12 You know what LRS stands for within the</p> <p>13 SiriusXM organization, correct?</p> <p>14 A. LRS, correct?</p> <p>15 Q. Right.</p> <p>16 A. Yes.</p> <p>17 Q. That's long-range scenario?</p> <p>18 A. Scenarios.</p> <p>19 Q. Scenarios.</p> <p>20 Are you familiar with the LRSs produced</p> <p>21 at SiriusXM?</p> <p>22 A. I'm familiar with some of them, yes.</p>	<p style="text-align: right;">598</p> <p>1 And at this time, I'd like to move for</p> <p>2 its admission into evidence.</p> <p>3 CHIEF JUDGE BARNETT: Thank you.</p> <p>4 MR. RICH: No objection.</p> <p>5 MR. FAKLER: No objection.</p> <p>6 CHIEF JUDGE BARNETT: SoundExchange</p> <p>7 Exhibit 9 is admitted.</p> <p>8 (SoundExchange Trial Exhibit Number 9</p> <p>9 was admitted into evidence.)</p> <p>10 BY MR. DESANCTIS:</p> <p>11 Q. Mr. Meyer, I'd like to direct your</p> <p>12 attention to the sixth page of the document.</p> <p>13 A. We've got to be careful here so I know</p> <p>14 exactly which one it is, because they all say one.</p> <p>15 Q. The numbers at the very bottom, it says</p> <p>16 Page 6 of 42.</p> <p>17 A. I'm sorry. I see it now.</p> <p>18 I was looking at the two 1s above it.</p> <p>19 Okay, got it.</p> <p>20 Q. The third bullet point down, which is</p> <p>21 also the third one up from the bottom -- I'm not</p> <p>22 going to read it out loud because it's a restricted</p>
<p style="text-align: right;">597</p> <p>1 Q. Okay. Take a look at what's been</p> <p>2 marked as SoundExchange 9.</p> <p>3 This is one such LRS, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it's a projection prepared by the</p> <p>6 finance department of various financial metrics,</p> <p>7 correct?</p> <p>8 A. It's a projection prepared by the</p> <p>9 financial department of one set of assumptions,</p> <p>10 yes. I'm sorry.</p> <p>11 Is that what you said? I wasn't --</p> <p>12 there's just a whole bunch of Page 1s and Page 2s.</p> <p>13 It makes me worry --</p> <p>14 Q. Sorry.</p> <p>15 A. -- where they came from.</p> <p>16 But anyways.</p> <p>17 Q. Well, we can use the Bates numbers.</p> <p>18 A. Great. That --</p> <p>19 CHIEF JUDGE BARNETT: Did you identify</p> <p>20 this as dated August 30th, 2011?</p> <p>21 MR. DESANCTIS: It's dated August 30,</p> <p>22 2011.</p>	<p style="text-align: right;">599</p> <p>1 document, but do you have any -- you don't have any</p> <p>2 reason to think that -- that what this says about</p> <p>3 the music royalty fee is incorrect, do you?</p> <p>4 A. No.</p> <p>5 Q. So going back to the chronology here,</p> <p>6 the music royalty fee was imposed in 2009 --</p> <p>7 A. Are we done with this document or not?</p> <p>8 Q. Not for good, but for now. So you can</p> <p>9 put it aside, but don't -- don't lose it.</p> <p>10 It's true, is it not, that the total</p> <p>11 subscribers to SiriusXM increased from 2009 to</p> <p>12 2010, correct?</p> <p>13 A. No, I don't think that's true.</p> <p>14 Q. From -- from --</p> <p>15 A. From 2009 to 2010, I think we lost</p> <p>16 subscribers, in total.</p> <p>17 Q. Did you lose self-pay subscribers?</p> <p>18 A. I'd have to see the numbers to recall</p> <p>19 that.</p> <p>20 Q. Okay.</p> <p>21 A. You were talking about for the year</p> <p>22 2009?</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

600	<p>1 Q. No. I'm talking about actually for the</p> <p>2 year -- the fee was first imposed in 2009, and I'm</p> <p>3 talking for about the year 2010.</p> <p>4 A. No. Then I agree with you. I'm sorry.</p> <p>5 Q. So 2010 saw additional subscribers as</p> <p>6 compared to 2009?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So there was growth in</p> <p>9 subscribership in 2010?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And subscribership grew in 2011</p> <p>12 as compared to 2010, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. All this while the music royalty</p> <p>15 fee was in place, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, SiriusXM has decided to increase</p> <p>18 its -- its retail rates, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And that was Sirius' voluntary</p> <p>21 decision, right?</p> <p>22 A. Yes.</p>	602	<p>1 subscribers, has actually gone down from 2 percent</p> <p>2 to 1.9, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And subscriber growth in the first</p> <p>5 quarter of 2012 was greater than expected, correct?</p> <p>6 A. Versus what?</p> <p>7 Q. Versus what the guidance had been from</p> <p>8 the company previously.</p> <p>9 Didn't the company beat expectations?</p> <p>10 A. I think the company beat -- beat</p> <p>11 analysts' expectations. I will tell you it's the</p> <p>12 number I expected.</p> <p>13 Q. Okay. And that number that you</p> <p>14 expected is an increase in subscribers in the first</p> <p>15 quarter of 2012 as compared to 2011, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And, in fact, SiriusXM is</p> <p>18 predicting -- if -- if we draw this out over the</p> <p>19 long term, notwithstanding the rate -- the price</p> <p>20 increase, SiriusXM internally is predicting by 2016</p> <p>21 that it will have 30 million subscribers, correct?</p> <p>22 A. Not to my knowledge, publicly, no.</p>
601	<p>1 Q. It was a business decision?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And presumably, I'm right, am I</p> <p>4 not, that the business decision was that the</p> <p>5 increase in rates will have a net positive impact</p> <p>6 on revenue?</p> <p>7 A. Yes, total revenue.</p> <p>8 Q. Total revenue.</p> <p>9 Otherwise, Sirius wouldn't have raised</p> <p>10 the rates, right?</p> <p>11 A. That's our belief.</p> <p>12 Q. Okay. So even though your written</p> <p>13 direct testimony and your testimony here today said</p> <p>14 you don't know what effect it's going to have on</p> <p>15 subscribership, it was the thinking, it was the</p> <p>16 bet -- it was the prediction of the company in late</p> <p>17 2011 that the price increase would have a net</p> <p>18 positive effect on total revenues, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And, in fact, as it's turned</p> <p>21 out, for the first quarter of 2012, SiriusXM's</p> <p>22 churn, the amount of -- the rate at which you lose</p>	603	<p>1 And -- and even our guidance, I want to caution</p> <p>2 you, even for this year, is based on the auto</p> <p>3 industry remaining where it is, which is up</p> <p>4 significantly from last year, which is the</p> <p>5 fundamental driver of this growth.</p> <p>6 Q. I'm sorry. You said that the auto</p> <p>7 industry is up significantly --</p> <p>8 A. The auto industry --</p> <p>9 Q. -- sorry. Let me finish my question.</p> <p>10 A. You're right. I'm sorry. I apologize.</p> <p>11 Q. It's okay.</p> <p>12 I just wanted to clarify your answer</p> <p>13 that you said, that the auto industry is -- is up</p> <p>14 this year as compared to last?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Okay. And despite the uncertainties in</p> <p>17 your written direct testimony and in your direct</p> <p>18 oral testimony that you described, you would agree,</p> <p>19 would you not, that during the rate term of 2013 to</p> <p>20 2017 time period, SiriusXM's subscriber base is not</p> <p>21 likely to contract?</p> <p>22 A. I -- I would say that my internal</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

604	<p>1 forecast is, barring some change, major change in 2 -- in the economic climate in the country, barring 3 some type of disaster -- I can give you a whole 4 long list -- 5 Q. Anything is possible. 6 A. -- well, in fact, has been possible -- 7 Q. Right. 8 A. -- I mean, you know, I can tell you in 9 2008, we had charts that showed very rapid growth 10 for 2009. We went backwards. 11 I can tell you in 2011, Your Honors, we 12 had no idea a tsunami would hit Japan and 13 significantly disrupt the auto industry, which hurt 14 our business during that period. 15 But I don't know about those -- and I 16 certainly don't know where the economy is going. 17 Q. I didn't ask you if you did. 18 Let's get back to the question, though, 19 which was that you would agree, would you not, that 20 during the 2013 to 2017 rate period, SiriusXM's 21 subscriber base is not likely to contract? 22 A. That's certainly our objective.</p>	606	<p>1 Do you remember that testimony? 2 A. Yes. 3 Q. Okay. Is it fair to say, however, that 4 Sirius has no plans to launch additional satellites 5 over the next several years? 6 A. Well, no. We're going to launch one in 7 December. 8 Q. There's the 2012 scheduled launch? 9 A. Correct. 10 Q. After that, there's no scheduled 11 launches until 2018, correct? 12 A. In that time frame. 13 I want to point out to you, 14 Your Honors, that the inherent satellite technology 15 is an issue. And by that, I mean the satellites 16 are built for a stated life. I've been in this 17 business a long time. Every one of them has some 18 type of problem, and they're always difficult to 19 project. 20 So given the health of the fleet today, 21 that projection is right. I can't warrant to you 22 that that health projection is correct.</p>
605	<p>1 Q. And you agree that it's likely, 2 correct? 3 A. Yes. 4 MR. RICH: Objection; asked and 5 answered. 6 CHIEF JUDGE BARNETT: Sustained. 7 MR. DESANCTIS: Okay. I'll take it, 8 then. 9 JUDGE ROBERTS: How much longer do you 10 have, Mr. DeSanctis? 11 MR. DESANCTIS: I realize it's 4:30. 12 Not much at all. 13 With the indulgence of the Court, 14 10 minutes. 15 CHIEF JUDGE BARNETT: I'm willing. 16 MR. DESANCTIS: Thank you. I 17 appreciate it. 18 BY MR. DESANCTIS: 19 Q. You testified relatively extensively in 20 your written testimony and in your oral testimony 21 about the cost of launching satellites and the 22 satellite network that SiriusXM owns and operates.</p>	607	<p>1 And remember, we can't send out a truck 2 to fix these when they go wrong. We have to bite 3 off the 300 million and three years of lead time. 4 So I don't know that that's actually true, okay? 5 Q. It is, however -- well, you're not 6 saying that there is a significant material risk 7 that SiriusXM will have significant expenditure -- 8 capital expenditures on satellites, are you? 9 A. What I'm saying is that our plan today 10 is that we would begin replacing again in the '18 11 time frame. okay? 12 What I can't predict is what will 13 happen between now and then to the fleet and what 14 impact that might have on our decision to -- to 15 have to do something. 16 Q. Right. And, again, because anything is 17 possible. 18 But my question to you is, it's not -- 19 that's not a material risk that SiriusXM will have 20 significant expenditures over the next 21 several years on satellites, right? 22 A. I don't believe it's a material risk.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

608	<p>1 no.</p> <p>2 Q. I think this is the last document I'm</p> <p>3 going to show you, and then hopefully we will be</p> <p>4 done for the day.</p> <p>5 (SoundExchange Trial Exhibit Number 10</p> <p>6 was marked for identification</p> <p>7 purposes.)</p> <p>8 BY MR. DESANCTIS:</p> <p>9 Q. This is a multipage document --</p> <p>10 MR. DESANCTIS: Sorry. I jumped the</p> <p>11 gun.</p> <p>12 BY MR. DESANCTIS:</p> <p>13 Q. I'm showing you what has been marked as</p> <p>14 SoundExchange Exhibit 10. It's a multipage</p> <p>15 document, the first page of which bears the</p> <p>16 Bates Number SXM_CRB_DIR_20637.</p> <p>17 You recognize this, don't you,</p> <p>18 Mr. Meyer?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. I think it's the deposition transcript</p> <p>22 from our Q3 2011 earnings call.</p>
609	<p>1 Q. Okay. And you participated in that</p> <p>2 call, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Let me turn your attention to</p> <p>5 Page 4 of the -- of the paginated document,</p> <p>6 Bates Number 20640.</p> <p>7 CHIEF JUDGE BARNETT: Are you going to</p> <p>8 be offering this?</p> <p>9 MR. DESANCTIS: I'm sorry. Yes, I'd</p> <p>10 like to offer the document into evidence at this</p> <p>11 time.</p> <p>12 MR. RICH: One minute, Your Honor.</p> <p>13 (Pause.)</p> <p>14 MR. RICH: Your Honor, this is a</p> <p>15 third-party transcript whose accuracy I don't think</p> <p>16 this witness can vouch for. I won't speak for him,</p> <p>17 but -- therefore, we do object to its</p> <p>18 admissibility.</p> <p>19 I don't have a problem with questioning</p> <p>20 the witness and seeing if it passes his reflector</p> <p>21 or if he has personal knowledge of it.</p> <p>22 But to attest the accuracy of this</p>
610	<p>1 transcript, I think we need Bloomberg here.</p> <p>2 MR. DESANCTIS: This is an official</p> <p>3 Bloomberg transcript of an earnings call. If -- if</p> <p>4 anything, I -- I think it's ironic that counsel is</p> <p>5 objecting to the witness' inability to vouch for</p> <p>6 the accuracy of this document when he was arguing</p> <p>7 up here a moment ago that -- that blog posts from</p> <p>8 The New York Times and television commercials</p> <p>9 should be admitted into evidence, and they were.</p> <p>10 This is an official Bloomberg</p> <p>11 transcript of an earnings call in which the witness</p> <p>12 participated.</p> <p>13 CHIEF JUDGE BARNETT: Why don't you</p> <p>14 question him on that for foundation purposes?</p> <p>15 MR. DESANCTIS: Okay.</p> <p>16 BY MR. DESANCTIS:</p> <p>17 Q. Mr. Meyer, did you participate in the</p> <p>18 third quarter 2011 earnings call?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Okay. Do you frequently participate in</p> <p>21 SiriusXM quarterly earning calls?</p> <p>22 A. Yes, I do.</p>
611	<p>1 Q. Okay. Are transcripts made --</p> <p>2 regularly made of those calls?</p> <p>3 A. Yes, they are.</p> <p>4 Q. Do you ever review those transcripts?</p> <p>5 A. No, I don't.</p> <p>6 Q. You never review transcripts of an</p> <p>7 earnings call?</p> <p>8 A. No.</p> <p>9 Q. Do you have any reason -- as you look</p> <p>10 at this document, do you have any reason not to</p> <p>11 believe that it is -- that it is an accurate</p> <p>12 transcript of the call in which you participated?</p> <p>13 A. No --</p> <p>14 Q. Okay.</p> <p>15 A. -- no, I don't.</p> <p>16 MR. DESANCTIS: Then I would move for</p> <p>17 the document's admission.</p> <p>18 MR. RICH: Renew the objection.</p> <p>19 Your Honor. These would be -- unlike these</p> <p>20 commercials announcements, these would be</p> <p>21 admissions against interests of our client and,</p> <p>22 therefore, potentially significant.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

612	<p>1 They're official documents. They're</p> <p>2 8-Ks, 10-Ks they can use which are company</p> <p>3 sponsored.</p> <p>4 And, again, I have no problem with this</p> <p>5 witness or Mr. Frear or anybody else who's quoted</p> <p>6 here being cited these and asked if specific</p> <p>7 language and comments attributed to them are</p> <p>8 accurate. That seems to be the proper way to use</p> <p>9 this document, not just move it in wholesale.</p> <p>10 JUDGE ROBERTS: Why do we need it at</p> <p>11 all, Mr. DeSanctis?</p> <p>12 MR. DESANCTIS: I do think it's a</p> <p>13 statement of the company. Just simply because it's</p> <p>14 a transcript doesn't mean it's not a statement of</p> <p>15 the company.</p> <p>16 JUDGE ROBERTS: It may be a statement</p> <p>17 of the company, but we just have one person from</p> <p>18 the company here, not the company.</p> <p>19 MR. DESANCTIS: That's right, but we --</p> <p>20 you don't always have the luxury of being able to</p> <p>21 use every document with every witness.</p> <p>22 But let me -- let me ask the witness</p>	614	<p>1 But we also don't know -- lots of things happen and</p> <p>2 go wrong.</p> <p>3 Q. You also testified that the risk of</p> <p>4 something going wrong and having a significant</p> <p>5 capital expenditure on satellites is not a</p> <p>6 significant material risk, right?</p> <p>7 A. But I want to clarify, too, is if it's</p> <p>8 one, I'm not worried; if it's two, I'm not really</p> <p>9 not worried; if it's something else, a catastrophic</p> <p>10 failure -- we've got new satellites up that we</p> <p>11 don't have any performance history on.</p> <p>12 So I can't tell you -- I can only tell</p> <p>13 you what the manufacturers told us how long they're</p> <p>14 going to last, okay? That's the reason why we have</p> <p>15 a spare up there, quite candidly. Okay?</p> <p>16 And -- but -- if something happens and</p> <p>17 that spare has to be used, we will begin building a</p> <p>18 spare immediately.</p> <p>19 I don't know. These are new</p> <p>20 satellite -- I mean, the -- there's one that hasn't</p> <p>21 even launched yet. I have no way to predict its</p> <p>22 reliability.</p>
613	<p>1 the line of questioning that I -- that I wanted to</p> <p>2 ask, and -- and we'll see.</p> <p>3 BY MR. DESANCTIS:</p> <p>4 Q. Mr. Meyer, let me turn your attention</p> <p>5 to Page 4 of the document, which is Bates</p> <p>6 numbered 20640.</p> <p>7 A. Yes.</p> <p>8 Q. At the very bottom -- first of all, I</p> <p>9 should say this is Mr. Mel Karmazin talking,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And he's the CEO of SiriusXM?</p> <p>13 A. Yes.</p> <p>14 Q. At the very bottom of Page 4,</p> <p>15 Mr. Karmazin states, We will have many years</p> <p>16 without the need for substantial satellite capital</p> <p>17 expenditures.</p> <p>18 You don't disagree with that, do you?</p> <p>19 A. Based on what we know, no.</p> <p>20 Again, what I said was what I believe,</p> <p>21 which is our plan is that we don't have a</p> <p>22 significant launch issue until the '18 time frame.</p>	615	<p>1 But that's what the statement said,</p> <p>2 yes.</p> <p>3 Q. Right. The statement says, The company</p> <p>4 will have many years without the need for</p> <p>5 substantial satellite capital expenditures?</p> <p>6 A. Yes.</p> <p>7 Q. And are you aware of any material risks</p> <p>8 that make this statement untrue?</p> <p>9 A. I've made clear what I think are the</p> <p>10 risks. I don't -- if I'm being argumentative, I'm</p> <p>11 not meaning to be.</p> <p>12 Q. Okay. I'm just -- I'm just -- I want</p> <p>13 the record to be clear whether you're saying there</p> <p>14 are material risks that make this statement untrue?</p> <p>15 MR. RICH: Objection. It's about the</p> <p>16 fourth time it's been answered.</p> <p>17 CHIEF JUDGE BARNETT: Asked and</p> <p>18 answered.</p> <p>19 And, Mr. DeSanctis --</p> <p>20 MR. DESANCTIS: I think I'm done, then.</p> <p>21 MR. RICH: Your Honor, may I ask one</p> <p>22 question on redirect, please, so we can release the</p>



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

616	<p>1 witness and not call him back in the morning?</p> <p>2 CHIEF JUDGE BARNETT: Only one?</p> <p>3 MR. RICH: One.</p> <p>4 MR. HANDZO: Mr. Fakler, any questions?</p> <p>5 MR. FAKLER: No, Your Honor.</p> <p>6 CHIEF JUDGE BARNETT: Okay. You may.</p> <p>7 JUDGE WISNIEWSKI: Any questions from</p> <p>8 the Bench?</p> <p>9 MR. RICH: Would you like to go first?</p> <p>10 JUDGE WISNIEWSKI: No. Go ahead.</p> <p>11</p> <p>12 REDIRECT EXAMINATION</p> <p>13</p> <p>14 BY MR. RICH:</p> <p>15 Q. If you would put back before you a</p> <p>16 document that's now in evidence as SoundExchange</p> <p>17 Trial Exhibit 8. This is the Pandora Use by</p> <p>18 SiriusXM Subscribers document.</p> <p>19 A. Yes.</p> <p>20 Q. Mr. DeSanctis asked you some questions</p> <p>21 at Page 20 and then at Page 22 of the document, and</p> <p>22 I discern that you perhaps would like a chance to</p>	618	<p>1 for the next five years -- and I'm sure it's going</p> <p>2 to be positive -- I'm sure that's our objective.</p> <p>3 What I am primarily concerned about is,</p> <p>4 also, I have no way to predict what the impact of</p> <p>5 this competition will be on our sub growth, so I</p> <p>6 want to make sure that caveat is clear. I have no</p> <p>7 way to know what it will do.</p> <p>8 CHIEF JUDGE BARNETT: And when you say</p> <p>9 "sub growth," you're referring to subscribers?</p> <p>10 THE WITNESS: I'm sorry, Your Honor.</p> <p>11 Yes, subscriber growth.</p> <p>12 CHIEF JUDGE BARNETT: Thank you.</p> <p>13 MR. RICH: Thank you.</p> <p>14 CHIEF JUDGE BARNETT: Judge, questions?</p> <p>15 JUDGE WISNIEWSKI: Just one, Mr. Meyer.</p> <p>16 On Page 5 of your written direct</p> <p>17 testimony at Paragraph 11, you talk about</p> <p>18 terrestrial radio competition.</p> <p>19 THE WITNESS: Yes, sir.</p> <p>20 JUDGE WISNIEWSKI: And in parentheses</p> <p>21 in the second sentence, you say, which pays no</p> <p>22 performance royalties whatsoever to the record</p>
617	<p>1 put this in a broader context of interpretation</p> <p>2 from your own perspective. And now's your</p> <p>3 opportunity to do so.</p> <p>4 A. Yes.</p> <p>5 My -- my problem with this research and</p> <p>6 what I would like Your Honors to realize is that</p> <p>7 what this says is that our users listen to both.</p> <p>8 If you look on several pages, it shows</p> <p>9 they listen to SiriusXM in the car and Pandora at</p> <p>10 home.</p> <p>11 When we asked them why they don't</p> <p>12 listen to Pandora in the car, they say because they</p> <p>13 can't get it yet, okay?</p> <p>14 And so I don't believe that you can</p> <p>15 draw a conclusion yet of what these users are going</p> <p>16 to do. And, in fact, this document itself scares</p> <p>17 me more, that when this stuff is available to be</p> <p>18 easily used in the car, it clearly is a competition</p> <p>19 because it's used extensively at home.</p> <p>20 And I'd to clarify one of my answers</p> <p>21 where I had a chance to think, but it's important.</p> <p>22 And that is when counsel asked me about sub growth</p>	619	<p>1 industry.</p> <p>2 Are you referring to sound recording</p> <p>3 performance --</p> <p>4 THE WITNESS: Yes.</p> <p>5 JUDGE ROBERTS: -- royalties?</p> <p>6 Did you happen to read today's Wall</p> <p>7 Street Journal?</p> <p>8 THE WITNESS: I saw it today and I'm</p> <p>9 very curious to know what big box or Big Machine</p> <p>10 means.</p> <p>11 But at the time this testimony was</p> <p>12 written, it was my understanding that terrestrial</p> <p>13 radio they did not pay those rights.</p> <p>14 JUDGE WISNIEWSKI: Thank you.</p> <p>15 THE WITNESS: I'm very curious to see</p> <p>16 what it is, Your Honor.</p> <p>17 CHIEF JUDGE BARNETT: Any follow-up</p> <p>18 from counsel based upon the questions from the</p> <p>19 Bench?</p> <p>20 MR. RICH: We just have one</p> <p>21 housekeeping matter, if my associate may speak to</p> <p>22 it.</p>

# Capital Reporting Company

## Determination of Rates and Terms 06-06-2012 - Vol. II

620	<p>1 MS. PERELMAN: Your Honor, pursuant to</p> <p>2 the regulations, part of our written direct case</p> <p>3 that was filed in November --</p> <p>4 JUDGE ROBERTS: Would you please</p> <p>5 identify yourself?</p> <p>6 THE WITNESS: My name is</p> <p>7 Sabrina Perelman. I'm with Weil, Gotshal &amp; Manges</p> <p>8 on behalf of SiriusXM.</p> <p>9 As part of our written direct statement</p> <p>10 that was filed in November of last year, we</p> <p>11 appended the designated written and live hearing</p> <p>12 testimony of certain of the -- of the witnesses</p> <p>13 from the Satellite I proceeding, which is permitted</p> <p>14 pursuant to the regulations just as a matter of</p> <p>15 technicality.</p> <p>16 To the extent they need to be formally</p> <p>17 moved into evidence, we would like to do that at</p> <p>18 this time with respect to the witnesses whose</p> <p>19 testimony is incorporated by reference into</p> <p>20 Mr. Meyer's written direct testimony. And those</p> <p>21 are the testimonies of Stephen Cook,</p> <p>22 John Douglas Wilsterman, Anthony Masiello,</p>	622	<p>1 asked the witness whether Mr. Cook was a witness in</p> <p>2 the prior proceeding, and he said he didn't know.</p> <p>3 And now, he's the proffering witness for that</p> <p>4 witness' designated testimony.</p> <p>5 He was asked in his deposition whether</p> <p>6 he's read any SiriusXM witnesses' statements, and</p> <p>7 he said no. So even if we're going to assume that</p> <p>8 a witness who is different from the witness whose</p> <p>9 designated testimony is being offered could be the</p> <p>10 sponsor, this witness is not an appropriate sponsor</p> <p>11 for this testimony.</p> <p>12 Finally, this testimony -- it's not as</p> <p>13 if SiriusXM wants to designate a particular fact</p> <p>14 and is designating, you know, a particular page of</p> <p>15 some testimony; they're designating -- I think</p> <p>16 it's -- one, two, three, four, five -- six</p> <p>17 witnesses' testimony, all of which is six years</p> <p>18 old.</p> <p>19 There is no proffer of its relevance or</p> <p>20 the need for it to be here. All it means is the</p> <p>21 parties are going to have to address it in their</p> <p>22 findings of fact, because now this is becoming</p>
621	<p>1 Gary Parsons, Robert Law and Terrence Smith.</p> <p>2 CHIEF JUDGE BARNETT: Mr. DeSanctis?</p> <p>3 MR. DESANCTIS: We object to the</p> <p>4 admission of these documents. And it seems like</p> <p>5 I've been objecting so much today. I really don't</p> <p>6 like to be the difficult one, but we really feel</p> <p>7 the admission of these documents is improper.</p> <p>8 It has long been the position of the</p> <p>9 CRJs that consistent with Rule 351.10, designated</p> <p>10 testimony, like all other exhibits, must be</p> <p>11 submitted with a sponsoring witness. And it has</p> <p>12 always been the CRJs' position that the sponsoring</p> <p>13 witness has to be the same witness whose</p> <p>14 testimony -- whose prior testimony is being</p> <p>15 offered.</p> <p>16 In the past, when SoundExchange and</p> <p>17 other parties have tried to have a particular</p> <p>18 witness designate testimony of somebody else in a</p> <p>19 prior proceeding, that has been denied.</p> <p>20 Beyond that, there are numerous reasons</p> <p>21 why this designation of testimony should not be</p> <p>22 permitted. First of all, you may recall that I</p>	623	<p>1 evidence, too.</p> <p>2 It's just sort of piling on last term's</p> <p>3 proceeding into this one, when Mr. Rich stood up in</p> <p>4 his opening statement and said, and I quote, As the</p> <p>5 record here will demonstrate, this is really</p> <p>6 critical. A tremendous amount has changed</p> <p>7 technologically and competitively in the last</p> <p>8 few years. And he went on to explain why. And he</p> <p>9 concluded with so we have a dramatically different</p> <p>10 record here than you faced back in 2007.</p> <p>11 So if the world has changed, designated</p> <p>12 testimony from witnesses in 2006 that SiriusXM</p> <p>13 doesn't even think is important enough to refresh</p> <p>14 their testimony, make it current, make it relevant</p> <p>15 is yet one more reason why SoundExchange objects to</p> <p>16 the admission of these documents.</p> <p>17 And finally, there are a number of --</p> <p>18 there were a number of SoundExchange exhibits that</p> <p>19 were admitted during the testimony, the transcript</p> <p>20 of which is included in what SiriusXM is offering,</p> <p>21 but they are not offering those exhibits that were</p> <p>22 part of the transcript and part of the testimony.</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

624	<p>1 And we think it's improper for that reason as well.</p> <p>2 But that -- that would be very much a</p> <p>3 subsidiary reason to all the other ones that I've</p> <p>4 mentioned.</p> <p>5 JUDGE ROBERTS: Running down the list</p> <p>6 of your objections, Mr. DeSanctis, first off, the</p> <p>7 purpose of the rule, of course, is so we don't have</p> <p>8 to plow old ground, so that the witnesses don't</p> <p>9 have to come back in again. And granted, they</p> <p>10 probably might have new things to say, but the</p> <p>11 purpose of the designation is that we don't have to</p> <p>12 have that again. And we take it for what it's</p> <p>13 worth, understanding in all instances the</p> <p>14 designated testimony is from a prior proceeding and</p> <p>15 it may, in fact, be stayed.</p> <p>16 And we will certainly have plenty of</p> <p>17 opportunity to point that out.</p> <p>18 Second off, you indicated that it's</p> <p>19 been our practice in the past not to allow a</p> <p>20 witness to designate -- or have a party designate</p> <p>21 testimony where that witness is not appearing</p> <p>22 again.</p>
625	<p>1 I would have to disagree with you on</p> <p>2 that. We've had certainly a number of proceedings</p> <p>3 where testimony has come in. And, again, it's so</p> <p>4 that we don't have to, yet again, hear those</p> <p>5 witnesses bringing up their point.</p> <p>6 Then you have one other point now that</p> <p>7 escapes my memory.</p> <p>8 MR. DESANCTIS: It's simply</p> <p>9 overburdensome to the parties and to the Court to</p> <p>10 have to deal with these in -- as being in evidence</p> <p>11 when counsel made very much a point in his opening</p> <p>12 statement that everything has changed, that this is</p> <p>13 a new order.</p> <p>14 JUDGE ROBERTS: Actually, Judge Barnett</p> <p>15 pointed out that you made reference that exhibits</p> <p>16 were not --</p> <p>17 MR. DESANCTIS: Oh, yes.</p> <p>18 JUDGE ROBERTS: -- the rule does not</p> <p>19 require that.</p> <p>20 MR. DESANCTIS: I know it doesn't.</p> <p>21 JUDGE ROBERTS: It requires submission</p> <p>22 of complete testimony, but there's no mention of</p>
626	<p>1 exhibits.</p> <p>2 Now, I don't recall where in the past</p> <p>3 we have ruled that that includes exhibits, but if</p> <p>4 you have something to refresh my memory on that,</p> <p>5 that would be good.</p> <p>6 MR. DESANCTIS: I don't have it at my</p> <p>7 fingertips, but I will have to look.</p> <p>8 CHIEF JUDGE BARNETT: With respect to</p> <p>9 the issue of exhibits, we'll take that under</p> <p>10 advisement, so we can all get out of here this</p> <p>11 afternoon. And we will reconvene at 9:00 -- excuse</p> <p>12 me, old habits -- 9:30 in the morning.</p> <p>13 JUDGE ROBERTS: Mr. Rich, one last</p> <p>14 thing.</p> <p>15 Could you please refresh our memory as</p> <p>16 to the witnesses that we have left for tomorrow?</p> <p>17 MR. RICH: I will read the sequence as</p> <p>18 it stands.</p> <p>19 JUDGE ROBERTS: I'm actually interested</p> <p>20 in who you think you're going to be presenting</p> <p>21 between --</p> <p>22 MR. RICH: David Frear will be the next</p>
627	<p>1 witness tomorrow and, followed by that, Ron Gertz.</p> <p>2 JUDGE ROBERTS: Ron Gertz.</p> <p>3 MR. RICH: And then, if time</p> <p>4 permitting, Mr. Blatter. Frear, Gertz, Blatter.</p> <p>5 JUDGE ROBERTS: Blatter would be on</p> <p>6 Friday?</p> <p>7 MR. RICH: If not tomorrow, depending</p> <p>8 on how far we get. In other words, we'll keep</p> <p>9 providing witnesses as long as there's time to put</p> <p>10 them on.</p> <p>11 JUDGE ROBERTS: All right. Fair</p> <p>12 enough. Thank you.</p> <p>13 (Whereupon, at 4:52 p.m., the</p> <p>14 hearing was adjourned to reconvene on</p> <p>15 Thursday, June 7, 2012, at 9:30 a.m.)</p> <p>16</p> <p>17 * * * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

628

1 CERTIFICATE OF CERTIFIED COURT REPORTER

2 I, CINDY L. SEBO, the Certified Court Reporter,  
3 do hereby certify that the witnesses whose testimony  
4 appear in the foregoing hearing is the testimony of said  
5 witnesses which were taken by me in stenotypy and  
6 thereafter reduced to typewriting by me or under my  
7 direction; that said hearing is a true record of the  
8 testimony given by said witnesses; that I am neither  
9 counsel for, related to, nor employed by any of the  
10 parties to the action in which this hearing was taken;  
11 and, further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

15  
16  
17

18 Cindy L. Sebo, RMR, CRR, RPR, CSR,  
19 CRR, RSA, Notary Public in and  
20 for the District of Columbia

21

22 My commission expires: April 14, 2015

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II

628

1 CERTIFICATE OF CERTIFIED COURT REPORTER

2 I, CINDY L. SEBO, the Certified Court Reporter;  
3 do hereby certify that the witnesses whose testimony  
4 appear in the foregoing hearing is the testimony of said  
5 witnesses which were taken by me in stenotypy and  
6 thereafter reduced to typewriting by me or under my  
7 direction; that said hearing is a true record of the  
8 testimony given by said witnesses; that I am neither  
9 counsel for, related to, nor employed by any of the  
10 parties to the action in which this hearing was taken;  
11 and, further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

15

16

17

18

19

20

21

22 My commission expires: April 14, 2015



*Cindy L. Sebo*  
Cindy L. Sebo, RMR, CRR, RPR, CSR,  
CRR, RSA, Notary Public in and  
for the District of Columbia

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 1

<u>\$</u>	<b>1</b> 303:12 304:2	<b>10-year-old</b>	<b>1987</b> 320:14
<b>\$1.20</b> 430:14	306:16 308:12	547:13	<b>1s</b> 597:12 598:18
<b>\$1.97</b> 430:14	310:3 322:16,18	<b>11</b> 382:10 446:11	<u>2</u>
<b>\$10</b> 543:17	323:1 356:9,22	618:17	<b>2</b> 303:13 304:3
<b>\$11.38</b> 409:7	357:10 468:14	<b>11:56</b> 431:11	308:2,4 377:2,17
<b>\$12.60</b> 418:4	506:2,7,8 526:13	<b>12</b> 530:10 565:8	378:1
<b>\$12.95</b> 565:9	539:11 547:6	<b>12.60</b> 422:4	461:1,6,10,12,13
<b>\$137.69</b> 577:6	561:8 562:13	<b>12.95</b> 565:9	468:15 474:6,20
<b>\$14.49</b> 563:2 565:9	564:19 575:18	<b>12K</b> 360:18 361:16	560:10 568:8
<b>\$15</b> 543:18	<b>1.9</b> 602:2	362:6	602:1
<b>\$16</b> 567:19	<b>1/10th</b> 356:22	<b>12-year-old</b>	<b>2,000</b> 330:10
<b>\$2.11</b> 487:10	<b>1:00</b> 431:9	547:13	384:9,15
<b>\$2.46</b> 426:6 430:14	<b>1:03</b> 432:2	<b>12-year-olds</b>	<b>2,800</b> 329:2
<b>\$2.93</b> 416:15	<b>10</b> 303:21 380:19	547:12	<b>2.46</b> 426:14
<b>\$250</b> 363:9,16	401:13 461:3	<b>13</b> 396:16	<b>2:22</b> 509:7
364:4	530:10 541:1	<b>13.7</b> 558:6	<b>2:38</b> 509:7
<b>\$264</b> 361:13	605:14 608:5,14	<b>135</b> 413:11	<b>20</b> 395:16 401:13
<b>\$3</b> 411:10,16	<b>10:50</b> 377:9	<b>14</b> 347:11 522:19	443:12
<b>\$3.24</b> 488:19	<b>10:58</b> 377:9	558:5 628:22	565:13,19
<b>\$30</b> 569:8	<b>100</b> 341:12	<b>14.49</b> 565:9	590:16 591:9,22
<b>\$300</b> 533:4	344:4,11 345:6	<b>15</b> 446:3 541:2	592:11 616:21
<b>\$4</b> 413:20 414:4	346:16 347:3,17	562:1	<b>200</b> 370:8
543:16	370:8 478:8	<b>150</b> 402:8 529:4	382:1,11,15
<b>\$5</b> 563:3	529:3 533:22	540:20	<b>2000</b> 421:21
<b>\$5.48</b> 577:9	535:21 559:16	<b>15-'16</b> 550:4	<b>20001-4412</b> 301:9
<b>\$5.84</b> 577:11,13	<b>10019</b> 302:7	<b>155</b> 548:12 549:4	<b>2002</b> 380:18 381:3
<b>\$5.95</b> 412:6	<b>101</b> 299:17	<b>15th</b> 515:5	<b>20036-5339</b> 302:15
<b>\$8</b> 563:3	<b>10153-0119</b> 300:14	<b>16</b> 556:12	<b>2004</b> 511:11
<u>0</u>	<b>103</b> 323:16	<b>16-'17</b> 550:13	<b>2006</b> 623:12
<b>0001</b> 468:19	<b>105</b> 323:2,11	<b>1675</b> 302:6	<b>2007</b> 533:7 594:18
<b>0014</b> 395:12	<b>1050</b> 302:14	<b>17</b> 566:3,22 567:11	623:10
<b>0025</b> 404:11	<b>1099</b> 301:7	<b>170</b> 382:2,9	<b>2008</b> 406:19
<u>1</u>	<b>10-K</b> 397:7 571:17	<b>18</b> 465:9,14 565:19	557:18 604:9
	<b>10-Ks</b> 399:15	607:10 613:22	<b>2009</b> 385:6 557:19
	612:2	<b>1970</b> 487:11	594:11 595:2
	<b>10-Q</b> 393:20		599:6,11,15,22
	394:10,12,14		600:2,6 604:10
	396:9 397:7		

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 2

2010 381:21 382:15 484:12 581:8 595:2 599:12,15 600:3,5,9,12	202.639.6085 301:10 202.715.8465 302:16 20640 609:6 613:6	433:14,21,22 439:3 440:4 446:8 471:22 472:3 474:6,19,20 475:9 492:13 515:4,18 518:16 521:12 543:15 584:2	4 303:15 304:5 306:17 308:4 310:3 443:22 444:5 473:22 474:2 475:3 476:12 483:3,11 521:21 537:19 609:5 613:5,14
2011 312:18 313:2,5,9 361:1 375:18 381:11 452:14 453:15,17 461:21 477:9 484:12 515:5 565:6,7 573:8 577:15 589:8,21,22 596:11 597:20,22 600:11 601:17 602:15 604:11 608:22 610:18	21 577:21 212.310.8170 300:15 212.457.5445 302:8 22 445:20 448:12 451:11 593:6 616:21 22.3 528:12 575:17 22-and-a-half 527:7 22nd 571:17	3.23 426:15 3.24 416:17,22 424:22 425:12 426:15 487:9 3.3 576:10 30 384:17 444:19,21 465:16 523:3 549:6,11 565:15 597:21 602:21	4:30 605:11 4:52 627:13 40 381:20 479:14 484:5 552:11 557:3 41 306:13 361:7,15 479:14 414 304:4 417 577:1 42 306:13 368:13 369:4 598:16
2011-1 299:5	23 380:18	300 395:13 402:8 607:3	42793 590:17 591:10
2012 299:12 312:7,15 313:6,9 375:22 376:4 452:15 462:12 477:10,11 490:10 564:19 565:3 570:12 571:17 576:9,22 601:21 602:5,15 606:8 627:15	24 491:6 25 376:16 379:11 382:11 384:17 395:17 491:6 511:19 25.7 416:9 250 363:20,22 26 576:7 27 515:18 577:3 29 575:14 577:21	307 303:4 30th 597:20 32 306:12 322 304:2 34 306:13 35 492:10 351.10 621:9 351.10(a 516:5 36 492:10 365 412:2 37 516:5 377 304:3 39 360:22 361:6,15 381:19	42795 593:7 43 371:4 432 303:4 44 306:14 373:3 559:18 568:4 443 304:5 45 306:14 368:13 369:8 371:4 373:3 376:15 442:16
2013 405:20 603:19 604:20	299 299:8 29th 573:7 581:8 2s 597:12 2X 366:15,20	365 412:2 37 516:5 377 304:3 39 360:22 361:6,15 381:19	450 304:6 456 303:5 46 306:15 501:2 559:19
2014 405:20		3G 580:6	461 303:12
2015 628:22			472 303:13
2015-2016 545:1 549:15			
2016 602:20			
2017 603:20 604:20	3 3 303:14 304:4 306:17 414:16,17,22	4	
2018 606:11			

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 3

473 303:14	598 303:20	462:12	474:1
474 303:12,13,15		477:10,13	ability 328:14
48 306:15 501:2	<u>6</u>	589:4,9 591:3,4	332:12 334:12
483 303:14,15	6 299:12 303:17	616:17	349:7 499:21
4G 534:4 580:6	307:11 560:17	80 307:21 318:11	567:2 574:16,17
	571:9,14 575:14	418:20	able 318:16
	598:16	475:19,22 545:2	330:1,2,12 362:6
<u>5</u>	60 307:17 542:3	550:5	389:19 500:4
5 303:16 304:6	568:3 586:6	80s 541:21 557:20	531:9,10 535:12
310:3 450:13	608 303:21	83 416:1 486:8	540:22 541:1,3
513:5,7 514:7	60s 541:21 542:3	84 486:8 488:21	546:5 547:14
521:15,21	616 303:8	85 465:5,9,14	561:15 574:21
537:19 618:16	62 464:1	488:22	579:2 612:20
50 341:19 342:1	628 299:8	89 357:10,12,13	above-captioned
344:6,13,14	64 394:9 558:13	465:6	299:15
345:7 346:16	65 397:19 413:11	8-K 571:18,19	absence 427:5
347:4 401:5	484:7 545:2	8-Ks 571:6 612:2	470:8 501:3
490:2 550:13	564:16	8th 324:5	absent 480:9
565:12	66 394:8 485:15		absolutely 509:14
500 403:5	6th 529:20	<u>9</u>	586:16 595:13
510 303:8		9 303:20 596:4,10	abstract 470:4
513 303:16	<u>7</u>	597:2 598:7,8	accept 311:14
521 303:16	7 303:18 307:11	9:00 626:11	313:13 335:5
53 535:6 555:17,21	347:9 580:21	9:30 626:12	404:3 487:17
570:17,18	581:4 582:8,9	627:15	496:9
54 462:22	627:15	9:32 299:21	accepted 307:18
55 462:22 484:7	7.5 477:9	90 528:21 559:9	332:20 339:18
490:2	70 550:5 586:9	900 301:8	594:3
56 568:4	700,000 560:17	91 490:3	accepting 363:11
563 403:18	70s 541:21	92 490:4,7	access 331:12
570 303:9	586:8,11	93 409:6	351:14
571 303:17	75 418:20	99.99 551:8	365:21,22 381:2
580 303:18	757 300:13		412:19 453:22
582 303:18	78 404:8,13 405:5	<u>A</u>	accident 546:5
589 303:19		a.m 299:21 377:9	accompanying
591 303:19	<u>8</u>	431:11 627:15	513:13
595 303:20	8 303:19 312:15	A2IM 473:9,11,19	according 332:17
	339:6 409:7		335:11 380:16
			396:8 404:7



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 4

425:13 426:6	<b>activity</b> 463:5	560:12	621:4,7 623:16
<b>account</b> 420:8	<b>actual</b> 339:8	<b>added</b> 420:22	<b>admissions</b> 611:21
423:20 469:5	360:11 370:8	<b>addition</b> 319:15	<b>admitted</b> 303:11
482:1 488:16	395:10 405:13	382:10 532:8	304:1 474:19,21
490:1	417:10 418:15	567:1	483:10,12
<b>accounted</b> 398:13	419:10 423:10	<b>additional</b> 365:19	516:6,16
<b>accounting</b> 484:6	451:6 594:21	391:15 467:12	517:13,14
<b>accounts</b> 376:16	<b>actually</b> 313:3	504:8 506:2	521:16 525:15
379:10	314:3 334:3	508:8 567:3	582:8,10 591:3,5
<b>accuracy</b> 515:10	343:12 345:1,12	600:5 606:4	598:7,9 610:9
609:15,22 610:6	368:2 370:7,9	<b>additive</b> 426:21,22	623:19
<b>accurate</b> 338:18	371:21 373:7,19	427:2,3	<b>admitting</b> 518:4
369:14 465:13	375:4 378:13	<b>add-on</b> 407:1	<b>adopt</b> 544:6
471:1 570:21	379:22 381:7,13	<b>address</b> 366:7	<b>adopted</b> 518:19
611:11 612:8	385:8 395:16,19	521:20 622:21	555:15
<b>accurately</b> 464:4	400:20 401:2	<b>addressed</b> 472:10	<b>adopting</b> 452:19
<b>acknowledge</b>	404:16 406:7,12	519:14	544:5
509:15,21	410:9 411:4	<b>addressing</b> 514:16	<b>adoption</b> 543:19
<b>acquire</b> 437:14	415:18 418:4	<b>adduced</b> 458:12	548:18,20
438:5	419:10 421:11	460:4	549:9,15
<b>acquiring</b> 435:18	424:4,22 432:19	<b>adjourned</b> 627:14	550:10,11,20
437:16 438:15	439:1	<b>adjust</b> 496:5	553:14
497:13	448:17,18,22	<b>adjusted</b> 420:11	<b>ads</b> 440:1 524:22
<b>acquisition</b> 440:5	454:12 471:16	425:13	<b>ad-supported</b>
<b>across</b> 351:7	476:2,13 478:2	<b>adjustment</b> 417:20	397:9 439:21
370:12 466:12	481:14 486:22	423:14 488:22	585:13
481:19,20 482:9	489:14 490:8	489:22 490:10	<b>advance</b>
<b>act</b> 317:22 389:15	492:5 506:14	494:3,5	342:13,18,20
488:11	521:19 525:5	<b>adjustments</b>	343:5,8
<b>acting</b> 313:15	529:12,21	419:3,20 490:8	348:19,21
315:1,4,9 317:19	545:9,18 551:22	<b>administrative</b>	349:1,3,8,17
318:1 319:12	565:3 572:3,22	320:15 321:3,6,9	<b>advances</b> 342:4,9
<b>action</b> 315:8	585:9 591:14	322:5 323:7	344:7,15,22
628:10,14	593:2 595:3	324:18	345:2,8 348:15
<b>active</b> 535:6	600:1 602:1	<b>admissibility</b>	478:22
555:17	607:4 625:14	575:10 609:18	<b>advantage</b> 317:3
577:10,13,22	626:19	<b>admission</b> 522:13	319:20 327:6
<b>actively</b> 554:14	<b>ad</b> 439:22	598:2 611:17	346:14,18 347:1
	538:1,16		349:2 365:20
	<b>adapted</b> 555:12		<b>advantages</b>
	<b>add</b> 371:8 391:18		
	426:11 427:13		
	487:18 520:12		

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 5

325:7,14 326:17 331:12 332:3,5 550:18 <b>adverb</b> 393:3 <b>advertised</b> 347:20 544:10 <b>advertisements</b> 522:18 525:11 <b>advertiser-free</b> 396:19 <b>advertiser-</b> <b>supported</b> 398:14 <b>advertising</b> 397:15 412:17 419:2,7,19 427:13,16 440:3 443:4 525:14 528:10 <b>advise</b> 477:7 <b>advisement</b> 626:10 <b>advising</b> 460:18 <b>advocate</b> 476:22 <b>advocated</b> 466:11 <b>affect</b> 322:6 326:1 335:18 548:18 <b>affected</b> 326:6 333:18,21 336:1 481:8,12 <b>affecting</b> 488:9 <b>affects</b> 319:22 335:1 482:9 <b>afforded</b> 329:13 <b>affording</b> 564:7 <b>afraid</b> 586:22 <b>aftermarket</b> 436:22 528:16 <b>afternoon</b>	432:8,17,18 509:8 510:14,15 570:4,5 626:11 <b>against</b> 342:18,19 344:7,15 499:4 505:16 611:21 <b>age</b> 370:14 <b>agenda</b> 340:1 <b>agent</b> 472:12 <b>ago</b> 380:19 441:2 462:20 484:11 521:1 528:13 530:10,11 533:21 534:10 535:8 550:18 552:17,18 554:15 559:20 570:10 574:2,3 583:9,10,12 593:3 610:7 <b>agreed</b> 313:13 335:21 348:15 349:22 350:10 566:12,13 594:9 <b>agreed-to</b> 594:7 <b>agreeing</b> 363:18 <b>agreement</b> 314:5,7 319:18 331:21 344:11 382:21 392:21 400:15 404:8 407:13 408:5 594:3 <b>agreements</b> 318:7 330:5 383:2,7,12,14 393:8,14 400:10 457:9 465:2 475:15 501:14 503:16 506:4 <b>ahead</b> 305:13 459:10 591:6	616:10 <b>ahold</b> 524:10 <b>airbags</b> 546:8 <b>akin</b> 505:22 <b>album</b> 452:13 <b>albums</b> 376:8 378:5 379:11 381:21 382:2,9,15 450:9 <b>allegedly</b> 501:4 <b>alleging</b> 517:5 <b>allocation</b> 409:3 429:4 <b>allow</b> 451:14 491:11,18 526:5 534:8 541:16 543:6 547:18 624:19 <b>allowed</b> 327:8,13,15 331:3,5 343:7 392:8 400:3 <b>allows</b> 504:12 535:11 537:13 541:20 543:5 544:17 549:21,22 578:21 <b>already</b> 335:21 454:13 507:21 508:1 555:21 <b>alternative</b> 335:4 437:10 465:22 480:11 <b>altogether</b> 531:22 <b>am</b> 327:12 338:20 364:19 382:22 410:8 428:1 435:3 457:4	519:14 557:12 561:14 572:1 575:16 576:8 577:4 601:3 618:3 628:8,11 <b>Amazon</b> 376:18,21 378:2,10,13,14 379:11,12,13,16, 20 <b>amazon.com</b> 376:17 <b>ambiguity</b> 407:2,6 <b>ambiguous</b> 449:14,18,19,21 450:1,4 451:3 <b>amend</b> 330:12,14 332:13 <b>amended</b> 306:4 308:21 329:9 332:16 <b>American</b> 512:22 <b>American-based</b> 529:12 <b>Americans</b> 533:20 <b>among</b> 319:8 343:11 384:2 457:13,22 462:18 463:4,6 468:8,14 564:15 <b>amount</b> 338:15 384:3 429:14,15 434:5 435:12 488:10 502:8 533:13 563:6 601:22 623:6 <b>amplify</b> 464:7 <b>analysis</b> 312:17 369:20 371:5 374:11 379:16 382:20 383:1
---	--	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 6

384:6 385:2 393:4,5 397:11 400:1,3 401:15 402:12,18,19 403:1 407:11 409:18 411:2,19 415:17 455:13 <b>analysts</b> 602:11 <b>analyst's</b> 576:15 <b>Analysts</b> 576:11 <b>analyzed</b> 398:21 <b>and/or</b> 478:20 <b>angry</b> 562:2 <b>announced</b> 570:17 <b>announcements</b> 611:20 <b>annual</b> 412:5 413:20 558:4 565:13,14 <b>answer</b> 308:22 311:22 312:3,15 318:16 322:1 324:21 362:6 369:1 388:13 393:19 394:1 406:11 424:7 466:5,9 467:8 468:6 469:21 471:3 477:21 587:6 592:3 603:12 <b>answered</b> 326:22 358:1 435:10 492:5 605:5 615:16,18 <b>answers</b> 308:9 309:8 313:1 331:10 481:2 617:20 <b>Antebellum</b>	343:17 <b>antenna</b> 552:1 <b>Anthony</b> 620:22 <b>anticipate</b> 414:13 <b>anticipates</b> 358:17 <b>anybody</b> 312:2 348:6 379:16 384:9 561:9 612:5 <b>anyone</b> 520:11 523:13 527:21 <b>anything</b> 312:9 388:15 423:4 425:7 457:15 470:10 476:7 482:20 515:10 542:16 548:5 604:5 607:16 610:4 <b>anyway</b> 368:3 <b>anyways</b> 579:6 597:16 <b>anywhere</b> 333:20 545:2 <b>apologies</b> 474:14 519:18 <b>apologize</b> 514:15 603:10 <b>app</b> 587:14 <b>apparent</b> 403:14 557:8 <b>apparently</b> 378:3 421:4 581:15 <b>appeal</b> 356:19 <b>appeals</b> 320:4 <b>appear</b> 434:19 441:22 444:6 507:19 628:4	<b>appeared</b> 372:22 374:12 378:10 453:13 <b>appearing</b> 528:3 624:21 <b>appears</b> 368:13 371:3 406:18 441:5 445:8 461:2,21 491:14 <b>appended</b> 620:11 <b>Appendices</b> 306:17 <b>appetite</b> 542:8 <b>Apple</b> 540:4 <b>applicable</b> 520:14 <b>applied</b> 416:14 497:14 <b>applies</b> 467:22 <b>apply</b> 321:21 327:10 395:4 <b>applying</b> 424:9 <b>appreciate</b> 484:2 582:16,17 605:17 <b>approach</b> 437:10 563:15 <b>approached</b> 372:14 427:22 433:6 <b>approaches</b> 530:13 <b>appropriate</b> 408:6 423:14,20 464:2 492:13 494:5 497:1 516:7 596:3 622:10 <b>approved</b> 566:11,18	<b>approving</b> 594:4 <b>approximate</b> 316:3 <b>approximately</b> 299:20 565:8 <b>approximation</b> 316:5 <b>apps</b> 587:20,22 588:4,7 <b>April</b> 511:11 581:8 589:8,21,22 628:22 <b>apt</b> 343:15 <b>area</b> 488:9 502:2 527:4 564:11 <b>areas</b> 456:15 526:13 529:18 551:11 <b>aren't</b> 422:8,21 423:1 441:21 476:1 <b>Arent</b> 302:5,13 <b>argued</b> 392:2,3 <b>arguing</b> 610:6 <b>argument</b> 320:21 403:17 424:20 493:3 497:18 521:21 555:16 586:16,17 <b>argumentative</b> 592:20 615:10 <b>arguments</b> 497:8 <b>arising</b> 457:5 <b>ARPU</b> 409:12 418:20 422:5,6,7,13 <b>arrangement</b> 471:18
--	---	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 7

<b>arrayed</b> 482:3	619:21	<b>attest</b> 518:22 609:22	<b>automaker</b> 546:14,21 548:21 552:8 560:8
<b>article</b> 448:19 449:11 515:4,6,17 522:8	<b>associated</b> 441:8 442:18 493:10	<b>attorney</b> 628:12	<b>automakers</b> 539:19 545:8,15 546:2 549:4 550:14 552:4 553:12 559:9,10
<b>articles</b> 517:3 520:15,16	<b>association</b> 340:2 473:13 474:1	<b>attorneys</b> 519:17	<b>automaker's</b> 552:8
<b>artist</b> 341:16 342:9,17 343:6,18,22 344:13 346:4 347:3 376:13 468:19	<b>associations</b> 314:2,9 340:10,16,18 464:22	<b>attract</b> 574:16	<b>automatic</b> 546:1
<b>artists</b> 326:9 341:20 342:5,13 343:13 345:13 346:18,21 347:8 352:21,22 353:6 355:6 451:13 452:21 478:20 479:3 491:19 542:2	<b>assume</b> 368:15 403:16,21 404:7 410:21 424:20 478:15 525:22 622:7	<b>attribution</b> 488:10	<b>automatically</b> 490:20
<b>artist's</b> 343:7	<b>assumed</b> 420:11	<b>attributed</b> 612:7	<b>automobile</b> 429:9,11 434:21 438:18 536:7,9 537:2,3 545:10,12,18,19 548:9
<b>aside</b> 364:13 372:15 421:15 467:19 577:16 599:9	<b>assuming</b> 434:7 500:2	<b>auction</b> 454:22	<b>automobiles</b> 518:19 536:4 544:12
<b>aspect</b> 325:18 327:3 464:5	<b>assumption</b> 404:4 407:18 489:17 504:4	<b>audible</b> 325:1	<b>automotive</b> 552:16
<b>assess</b> 367:13	<b>assumptions</b> 597:9	<b>audience</b> 356:20 398:12,20 399:1,4,5,18 485:17,22 486:7 489:11,18 587:8	<b>avail</b> 330:20 332:12
<b>assessing</b> 372:18	<b>assure</b> 538:2	<b>audiences</b> 541:14	<b>availability</b> 430:11 480:10 502:3,20 503:3,5
<b>assessment</b> 367:20 368:11 369:11 371:2 580:14	<b>AT&amp;T</b> 540:2 551:18	<b>audio</b> 299:7 534:13 543:7 579:5 580:15	<b>available</b> 366:17 373:10 385:10,11 398:19 399:6 477:22 487:2 555:22 617:17
<b>assets</b> 532:21,22	<b>attached</b> 514:3,10 517:4	<b>August</b> 461:21 597:20,21	<b>Avenue</b> 299:17 300:13 301:7 302:14 529:20
<b>assign</b> 447:4 488:4,6 505:11	<b>attaches</b> 581:8	<b>authentic</b> 524:16	<b>average</b> 395:10 409:2 411:14,22 412:4 416:18,19
<b>assigned</b> 429:15	<b>attempt</b> 374:14 384:19 419:12 425:10 488:18 491:22	<b>authenticate</b> 515:9	
<b>assignment</b> 368:3	<b>attempted</b> 367:19	<b>authenticity</b> 520:22 522:4 523:10 524:18,20	
<b>associate</b> 509:19	<b>attempting</b> 471:6	<b>author</b> 515:12 525:18	
	<b>attend</b> 337:19	<b>authored</b> 473:22	
	<b>attention</b> 478:2 560:18 575:13 590:15 598:12 609:4 613:4	<b>auto</b> 436:22 441:10 552:12 557:4,19,22 558:3,5 583:18 603:2,6,8,13 604:13	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 8

417:6,7,18 418:10,12,15,18 419:9,10,18 420:9,13 423:22 424:14,18,21 468:9 548:11 <b>avert</b> 453:8 <b>avoid</b> 309:9 <b>aware</b> 374:5 375:1,17 388:14 394:14,21 402:11 428:5 452:8 460:14 471:14 516:4 533:5 579:13,15 583:19 585:8,9 615:7 <b>awareness</b> 458:7 <b>away</b> 354:9 367:8 480:20 482:6,12 493:18 494:5 498:16 507:7 539:19 <b>awful</b> 330:9  <hr/> <div style="text-align: center;"><b>B</b></div> <hr/> <b>backseat</b> 547:14 <b>backwards</b> 604:10 <b>bad</b> 336:15 337:6 <b>bail</b> 560:20 <b>balance</b> 446:21 448:1 463:9 <b>ballpark</b> 401:4 <b>Barnett</b> 300:3 305:7,19 306:10,20,22 324:2,7 367:6 377:3,6,10,20 393:22 394:3 431:7 432:8,11	455:17,22 456:3,9 459:8,18 461:11 474:7,18 483:5,8,10,15,18 ,21 484:2 508:15,20 509:2,8 510:2 514:20 515:15 518:9 520:7 521:4,6 524:15 525:12 526:4 569:17 572:8 575:3,6 582:7 590:18 591:2,6 597:19 598:3,6 605:6,15 609:7 610:13 615:17 616:2,6 618:8,12,14 619:17 621:2 625:14 626:8 <b>barring</b> 391:13 604:1,2 <b>bars</b> 391:13 <b>base</b> 307:13 320:5 362:1 408:7 531:6 540:18 560:11 565:4,20 568:9 603:20 604:21 <b>based</b> 329:9 330:16 346:9 371:15 383:2 394:5 399:21 402:16,21 403:2 405:13,14 416:17 439:18 458:7 466:22 479:2 496:15 502:16 508:16 533:14 549:2 577:15 603:2 613:19 619:18	<b>baseline</b> 447:7 596:11 <b>basic</b> 320:2 370:11 411:8 464:10 480:16 <b>basically</b> 311:10 348:21 372:19 375:15 376:12 387:7 390:1 445:17 451:4 480:18 490:4 500:12 535:18 537:3 546:3 559:2 <b>basing</b> 554:17 <b>basis</b> 384:12,13 423:10 463:21 494:9 516:12 525:2 527:8 563:2 564:15 569:1 575:8 <b>basketball</b> 538:13 <b>Bates</b> 381:14 474:13 581:6 589:6 590:17 591:10 597:17 608:16 609:6 613:5 <b>BBC</b> 562:13 <b>beach</b> 482:3,4 <b>bears</b> 474:12 513:21 581:5 589:5 608:15 <b>beat</b> 602:9,10 <b>became</b> 566:18 <b>become</b> 560:4 <b>becoming</b> 564:14 622:22 <b>beefed</b> 529:16	<b>beforehand</b> 453:21 <b>before-the-fact</b> 336:13 <b>begin</b> 314:8 363:2,16 382:22 447:9 541:16 587:15 594:12 607:10 614:17 <b>beginning</b> 299:20 463:2 465:9,14 492:9 522:19 544:1 546:20 567:12 <b>begun</b> 555:18 565:22 <b>behalf</b> 300:6 301:2 302:2 528:3 620:8 <b>behave</b> 542:15 <b>behind</b> 446:19 <b>Belarus</b> 362:11 <b>belief</b> 317:21 601:11 <b>believe</b> 307:20 315:3,4,22 316:4,21 317:18 318:4,10,13,22 320:10,17 321:12,14 322:1,8 325:4 333:11 339:4 403:2 404:8,16 415:18 421:1 433:8 448:12 450:8 453:9 465:5 474:11 476:16 484:12 497:9 518:21 530:4 533:21 542:14 545:1
--	--	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 9

549:12,19 550:12 554:22 555:1,2,5 556:6 566:3 570:20 586:4 587:7,19 588:3 591:14 594:11 607:22 611:11 613:20 617:14 <b>believed</b> 313:14 315:1,6,14 318:21 409:19 530:14,19 <b>believes</b> 362:7 <b>Bench</b> 519:13 616:8 619:19 <b>benchmark</b> 352:6 354:2,5,17 385:13 386:17 388:3 394:20 396:20,21 464:2 492:13 497:6 499:10 <b>benchmarks</b> 391:16 457:20 458:4 <b>benefit</b> 349:17 383:9 385:1 <b>best</b> 379:18 528:17 550:8 <b>bet</b> 507:18 542:18,20,21 601:16 <b>better</b> 313:14,19 315:1,4 317:10,20 318:1,2,22 324:13 502:22 512:8 520:1 530:20 558:1 562:3,4,5,6,7	<b>betting</b> 545:15 <b>beyond</b> 310:22 440:10 458:18 621:20 <b>bias</b> 319:22 <b>biased</b> 321:5,14 325:10 326:4 <b>biases</b> 321:7 <b>biggest</b> 533:12 535:3 536:13 587:8 <b>Billboard</b> 370:8 373:19 374:12 381:21 382:15 <b>billion</b> 576:10 <b>billions</b> 539:15,17,18 551:5 <b>bit</b> 350:7 372:5 412:16 419:21 431:8 491:14 492:11 500:19,20 509:18 523:14,16 541:3 542:10 550:22 574:7 <b>bite</b> 607:2 <b>black-and-white</b> 444:10 <b>Blatter</b> 369:16 627:4,5 <b>block</b> 514:18 529:20 551:12 <b>blog</b> 517:13 610:7 <b>Bloomberg</b> 610:1,3,10 <b>Bluetooth</b> 549:21	<b>blurtd</b> 390:6 <b>BMW</b> 518:19 <b>board</b> 477:8 495:1,4 552:1 594:17 <b>bodies</b> 320:4 <b>body</b> 393:2 467:21 <b>boil</b> 326:18 <b>bold</b> 462:5 <b>Born</b> 453:20 454:15 <b>borne</b> 552:4 <b>bottom</b> 381:8 398:4 419:13 445:4 465:8 584:16 598:15,21 613:8,14 <b>bought</b> 376:12 <b>bound</b> 335:7,8 <b>box</b> 512:19 591:11 619:9 <b>boxes</b> 512:16,17 <b>brand</b> 495:21 512:12 <b>brand-new</b> 532:6 <b>brands</b> 494:15 <b>breadth</b> 529:7 <b>break</b> 377:4 398:16,19 409:12 509:3 <b>breathes</b> 523:8 <b>brief</b> 377:8 509:6 520:8 <b>briefly</b> 479:13 515:21 520:10,12	524:20 528:4 <b>bring</b> 540:5 548:2 <b>bringing</b> 625:5 <b>broadcast</b> 526:17 541:11,13 551:6 555:9 586:5 <b>broadcasters</b> 370:22 <b>Broadcasting</b> 375:14 <b>broader</b> 503:18 617:1 <b>Broadway</b> 302:6 <b>broke</b> 378:2 562:11 <b>brought</b> 545:10 593:3 <b>BRUCE</b> 300:7 <b>bruce.rich@weil.c</b> <b>om</b> 300:16 <b>build</b> 435:13 539:15 540:5 546:21 551:6,18 <b>building</b> 299:16 439:2 540:3,9 614:17 <b>buildings</b> 529:19 551:11 <b>built</b> 534:2 537:11 545:3 553:20 606:16 <b>bulk</b> 528:13 <b>bullet</b> 591:10,22 592:9,11,14,22 598:20 <b>bullish</b> 558:16 <b>bunch</b> 379:14 455:5 458:3
---	---	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 10

597:12	<b>buys</b> 447:20 448:6	<b>car</b> 430:5 435:21	<b>cascade</b> 482:6
<b>bundle</b> 569:6	<b>buzzer</b> 519:11	438:22 442:9,15	<b>case</b> 305:21 309:8
<b>business</b> 335:4,10	<hr/>	516:1 522:20	314:15 330:22
358:10 375:13	<hr/> C <hr/>	527:2 528:22	331:8 339:4,16
439:13 511:20	<b>cable</b> 512:17 552:2	543:7 544:19	341:3,13 346:6
512:5,20 513:1	<b>caching</b> 504:19	548:2 550:1	347:13,22
528:5,7,15,18	507:4,5,7,10	555:22 556:6	350:19 373:17
533:10 534:13	508:6	559:5,6,8 568:2	386:10 401:9
535:1 536:2,3	<b>calculate</b> 411:9	578:19	409:6 412:15
539:9,12,14	433:8	579:14,17,18	419:8 429:8
543:7 544:3	<b>calculated</b> 407:12	584:18	468:1 496:7
550:15 559:3,5	410:1 423:10	617:9,12,18	499:20 522:1,12
560:3 564:12	<b>calculating</b> 423:21	<b>care</b> 364:9,12	523:2 531:18
568:14 571:5	480:6	464:7 564:6	544:17
581:20 601:1,4	<b>calculation</b> 386:8	<b>career</b> 523:9	546:13,16 549:1
604:14 606:17	387:3 395:8,20	<b>careful</b> 355:15	551:21 573:20
<b>businesses</b> 340:13	402:3,16	590:12 598:13	574:3,6 620:2
375:6 439:12	406:13,16 410:7	<b>Carlin</b> 343:16	<b>cases</b> 326:19 327:8
<b>businessmen</b>	594:22	376:7,11,15	356:9
341:7	<b>calculations</b>	378:5 379:10	<b>catalog</b> 351:9
<b>buttons</b> 585:20	385:19 386:16	<b>carmakers</b>	<b>catastrophic</b> 614:9
587:11	395:1 401:2	435:6,20 436:5	<b>catch-all</b> 520:17
<b>buy</b> 435:2 436:18	405:13 413:14	437:4 528:19	<b>categories</b> 351:8
445:17,18,22	<b>candid</b> 583:22	544:3 557:12	410:9 440:21
446:7,11,16,22	<b>candidly</b> 583:17	<b>CARP</b> 406:22	<b>category</b> 333:17
447:12,15,17,18	614:15	<b>carrier</b> 547:8	351:12 375:12
478:4 507:15	<b>canons</b> 321:3	<b>carry</b> 416:13	410:19 434:17
528:17,22	<b>capabilities</b> 534:9	491:4	440:9
558:11 559:5,6,8	<b>capability</b> 546:4	<b>carrying</b> 381:19	<b>cause</b> 420:14
<b>buyer</b> 307:9	555:8	<b>carryover</b> 398:4	<b>caused</b> 451:13
336:17 456:20	<b>capable</b> 436:10,19	463:2	<b>causes</b> 470:6
491:15 492:14	<b>capacity</b> 527:16	<b>cars</b> 435:1,2	<b>caution</b> 603:1
496:14	555:7	436:17 437:5	<b>cautionary</b> 557:9
<b>buyer/willing</b>	<b>capital</b> 299:18	442:11,12,14	<b>cautiously</b> 557:21
386:19 387:15	435:14,15 607:8	485:17 486:7	558:11
389:3 457:16,18	613:16 614:5	544:14 553:20	<b>caveat</b> 618:6
<b>buyers</b> 457:22	615:5	558:11	<b>CBS</b> 543:2
464:14 491:11	<b>captive</b> 549:3	<b>cartel</b> 470:12	<b>CD</b> 452:22 588:19
558:10 568:2		<b>cartelized</b> 319:11	589:1
<b>buying</b> 336:16			
528:17			

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 11

<b>CDs</b> 498:11,15 593:5,9	<b>CFR</b> 516:5	508:10	305:7,19
<b>cell</b> 537:5 538:19	<b>chain</b> 472:9,17 473:5	<b>characteristic</b> 347:19	306:10,20,22 324:2,7 367:6 377:3,6,10,20 393:22 394:3 431:7 432:8,11 455:17,22 456:3,9 459:8,18 461:11 474:7,18 483:5,8,10,15,18 509:2,8 510:2 514:20 515:15 518:9 520:7 521:4,6 524:15 525:12 526:4 569:17 572:8 575:3,6 582:7 590:18 591:2,6 597:19 598:3,6 605:6,15 609:7 610:13 615:17 616:2,6 618:8,12,14 619:17 621:2 626:8
<b>central</b> 350:19	<b>chains</b> 495:7	<b>characteristics</b> 411:8 458:21 487:3,14,18 590:4	
<b>cents</b> 401:5,13 409:6	<b>chair</b> 579:19	<b>characterization</b> 310:14 313:18 338:18 343:15 345:16 446:21 447:13 448:21 487:5	
<b>CEO</b> 511:13 613:12	<b>challenge</b> 564:17	<b>characterizations</b> 338:22	
<b>certain</b> 305:22 306:2 307:15 322:9,11 323:14 324:16,18 331:13 336:11,19 359:14 366:8 389:13 437:19,20 449:13 475:17 541:13 542:2 550:18 554:8 558:16 569:3 574:1 620:12	<b>challenges</b> 558:17	<b>characterize</b> 446:20	
	<b>chance</b> 368:22 616:22 617:21	<b>characterized</b> 449:11	
	<b>chances</b> 338:1 345:8	<b>characterizing</b> 364:19 448:8	
	<b>change</b> 360:4 382:19 429:3 444:14 482:19 533:12 536:13 538:20 539:7 559:22 586:9 604:1	<b>charge</b> 366:14 411:11 421:2 499:22 567:2 581:19	
	<b>changed</b> 306:5,18 562:12 623:6,11 625:12	<b>charged</b> 361:4 480:4	
	<b>changes</b> 482:20 533:9	<b>charges</b> 413:19	
	<b>Changing</b> 552:10	<b>charging</b> 366:13	
	<b>channel</b> 351:13 362:9,15 371:12 372:3,9 488:22 542:4 562:12 586:8,10,11	<b>chart</b> 430:10 444:18 592:5,8,16,21	
<b>certainly</b> 315:5 318:3 330:5 347:22 392:14 415:4 455:17 489:10 520:18 523:9 545:1 548:19 557:17 574:20 604:16,22 624:16 625:2	<b>channels</b> 362:8,18 370:17,18 372:11,17 373:13 412:22 413:11 416:11 424:16 486:18 487:2 489:3,14,19 529:4 540:20 541:2,8,13 586:6	<b>charts</b> 374:13 444:16 576:14 604:9	<b>child</b> 391:19
<b>certainty</b> 316:21	<b>character</b> 339:7	<b>cheaper</b> 495:20,22	<b>chime</b> 520:10
<b>CERTIFICATE</b> 628:1		<b>checked</b> 368:2 543:15	<b>choice</b> 302:2 334:16,18 335:9,10 466:17
<b>certification</b> 513:21		<b>CHIEF</b> 300:3	<b>choose</b> 330:20 537:7
<b>Certified</b> 628:1,2			<b>chooses</b> 540:5
<b>certify</b> 628:3			<b>chose</b> 413:7 539:1 576:2
<b>CFO</b> 595:8			<b>Christal</b> 378:21,22 380:4
			<b>chronology</b> 599:5
			<b>churn</b> 567:4 568:7 588:5 601:22



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 12

<b>churned</b> 562:14	331:2 342:22	<b>collectively</b> 313:15	<b>comments</b> 612:7
<b>churning</b> 561:5	343:1 369:3	315:2,5 318:1	<b>commercial</b> 427:6
<b>churns</b> 560:12	375:9 387:9	350:14	524:7 537:20
<b>Cindy</b> 299:18	391:12 393:18	<b>collectivity</b> 350:21	538:8,10 543:21
628:2,18	417:22 418:1	351:6 499:7	544:1
<b>circuit</b> 552:1	425:5 556:13,22	<b>colloquy</b> 465:11	<b>commercial-free</b>
<b>circumstance</b>	569:9 576:16	471:12	365:16
317:3 493:13	593:7 595:11	<b>collusion</b> 499:8	<b>commercials</b>
<b>circumstances</b>	615:9,13 618:6	<b>collusive</b> 468:12	425:21
316:14 364:2	<b>clearly</b> 617:18	469:4 470:2	426:6,11,14,18
393:1 465:19	<b>Cleopatra</b> 374:17	<b>color</b> 444:11,13,14	427:6 428:8,9,21
<b>cite</b> 374:16 394:9	375:1,9,18,19	<b>colored</b> 444:8	430:12,16
443:14	376:1	<b>Columbia</b> 299:20	522:3,10 610:8
448:15,17,18	<b>client</b> 390:11	628:19	611:20
491:17 564:17	393:7 509:22	<b>columns</b> 430:10	<b>commission</b>
<b>cited</b> 392:11	611:21	<b>combination</b>	628:22
402:5,14 462:2	<b>climate</b> 604:2	512:12 588:4	<b>commissioned</b>
464:12 522:14	<b>close</b> 333:13 354:5	<b>combined</b> 511:15	538:1
612:6	391:9 494:1	530:8	<b>commissions</b>
<b>cites</b> 389:22	528:21 529:3	<b>combining</b> 493:7	440:2
393:20 518:15	535:9	<b>comedy</b> 376:8,16	<b>committed</b> 562:8
<b>citing</b> 517:22	<b>closed</b> 473:9	379:3,11,18	<b>common</b> 343:4,21
<b>claim</b> 326:17	<b>closer</b> 341:5 350:7	488:22	344:1 345:17
327:6 339:21	501:19	489:7,12,19	365:12 453:4
487:1	<b>closest</b> 334:10	<b>comes</b> 360:1	<b>communicate</b>
<b>claims</b> 486:16	396:21	388:18,20	559:11
<b>clarify</b> 418:16	397:12,13	407:22 408:2	<b>communicating</b>
484:4 500:19	493:19 494:6	476:5 528:10	479:22
585:16 603:12	<b>Coca-Cola</b> 494:17	561:7	<b>communications</b>
614:7 617:20	<b>Coke</b> 495:12,18	<b>coming</b> 316:1	339:8 460:16
<b>classic</b> 541:22	<b>cola</b> 490:8,10	458:6 478:3,8	<b>companies</b> 314:21
542:1,2	495:1,4,6,8,11,2	528:14 533:14	315:13 317:22
<b>classical</b> 372:11,13	1 496:5	539:7 557:16	318:4,21 319:2
<b>classified</b> 531:2	<b>colas</b> 495:17 496:4	563:6,8 586:21	324:11 325:6
<b>clause</b> 318:9	<b>Coldplay</b> 451:17	587:2	327:6 328:11
475:11,15,18,21	452:9,11	<b>comment</b> 538:5	329:2,15 332:7
<b>clear</b> 312:12	<b>colleagues</b> 524:12	<b>commenting</b>	343:5 344:22
320:10 324:3	<b>collective</b> 319:5	392:22	346:8,18 350:17
	463:16		351:9 366:13
			383:3 402:7

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 13

456:22 457:6,13 458:1 463:7,11 464:1 465:21 466:13 468:14 469:4,18 484:6 491:17,18 501:7 505:8 511:13 527:2 530:11,12 534:17 583:18 <b>company</b> 299:19 343:7 344:5,6,7,12,14 345:6,22 346:3,6,15 347:1,7 363:1,9 402:4,9 419:15 423:11 441:11 449:14 450:18 463:20 466:3 469:8 479:6 506:5 511:3,4,8,15 512:15 526:14 527:21 529:14 530:6,8 554:14 566:18 593:19 594:1 601:16 602:8,9,10 612:2,13,15,17,1 8 615:3 <b>company's</b> 347:1 563:16 <b>comparable</b> 396:14 400:5 413:4,10,11 <b>compare</b> 370:13 397:6 410:22 535:7 543:9 <b>compared</b> 468:20 572:17 600:6,12 602:15 603:14 <b>comparing</b> 336:9	<b>comparison</b> 411:7 <b>comparisons</b> 485:21 493:4 <b>compensate</b> 434:22 455:2 <b>compensated</b> 439:18 <b>compete</b> 375:7 399:17,22 463:20 479:19 504:13 534:12 550:20 551:15 587:8 <b>competed</b> 457:7 <b>competing</b> 317:19 584:19 <b>competition</b> 319:8 365:10 399:12 463:6 466:16,19,20 467:1 482:7,18 499:14 533:13 547:5 553:3 556:8 583:20 586:21,22 587:3 588:2,9 617:18 618:5,18 <b>competitive</b> 315:16 317:2 370:21 387:4 388:6 397:12,13 399:8 453:9 463:19 464:13 482:12,22 493:13 498:12 504:16 527:18 533:13 551:4 552:21 563:20 586:4 <b>competitively</b> 623:7	<b>competitiveness</b> 388:5 481:4 <b>competitor</b> 493:19,20 494:6 553:5 <b>competitors</b> 399:14,15 411:5 492:20 493:4 494:12 496:2 497:11 501:5 534:12,21,22 <b>complement</b> 501:22 <b>complementary</b> 498:14 <b>complete</b> 320:6 330:4,7 465:12 513:9 625:22 <b>completely</b> 351:21 390:8 458:20 556:22 <b>complex</b> 358:2 372:5 <b>compliance</b> 595:14 <b>complicated</b> 530:21 <b>component</b> 334:1 431:4 <b>components</b> 409:12 429:9,15 431:6 454:4 <b>comprehensive</b> 320:7 <b>conceivable</b> 391:14 <b>conceivably</b> 393:3 436:3 <b>concept</b> 321:21 586:3	<b>conception</b> 533:2 <b>concern</b> 464:11 553:3 555:20 560:1 568:15 578:16 <b>concerned</b> 552:20 578:13 585:1 587:2 618:3 <b>concerns</b> 550:16 555:6 567:20 <b>concluded</b> 351:5 400:21 623:9 <b>concludes</b> 483:14 568:18 <b>conclusion</b> 347:21 364:15 451:2,9 462:19 464:5 617:15 <b>conclusions</b> 370:2 444:15 445:1 <b>concurrence</b> 563:19 <b>condition</b> 546:7 593:18,22 594:2,8 <b>conditions</b> 506:10 <b>confer</b> 473:9 521:5,10 575:5 <b>confine</b> 309:8 <b>confirm</b> 591:11,22 592:18 <b>confirming</b> 518:17 <b>conflicting</b> 449:20 <b>confront</b> 308:12 <b>confronts</b> 388:19 <b>confusing</b> 500:20 <b>Congress</b> 299:16 320:15,22
---	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 14

321:1,10 325:16 388:20 <b>congressional</b> 331:14 <b>conjunction</b> 487:3 <b>connected</b> 516:1 522:20 536:1 <b>Connecticut</b> 302:14 <b>connecting</b> 459:5 <b>connection</b> 393:10 451:20 572:6 <b>connectivity</b> 545:10 549:13 <b>consent</b> 331:19 <b>consequence</b> 547:2 <b>conservative</b> 419:13 <b>consider</b> 503:4 <b>considerably</b> 340:20 <b>considered</b> 462:19 <b>considering</b> 471:15 <b>consistent</b> 404:2 516:10 621:9 <b>consolidate</b> 531:10 <b>constellation</b> 532:3,5 <b>constitute</b> 299:14 366:10 <b>constrained</b> 573:5 <b>constraint</b> 541:5,8 <b>constraints</b> 331:5 <b>constructed</b> 487:17	<b>consult</b> 473:17 <b>consulted</b> 373:8 374:6,7 471:16 <b>consulting</b> 473:19 <b>consume</b> 542:19 <b>consumer</b> 397:9 398:9 399:10 408:17 410:14 511:19 512:11,13,22 529:10 540:16,18 542:8 545:11 548:4 <b>consumer-</b> <b>generated</b> 379:6 <b>consumers</b> 326:8 346:19 365:4,8 372:19 416:8 419:14 420:13 442:14 443:5 448:5 486:17 487:1 502:7,20 528:9 542:14 553:15 554:1 558:10 <b>consumption</b> 374:1 <b>contain</b> 318:8 545:3 <b>contained</b> 458:8 515:11 594:4 <b>contains</b> 369:11 <b>content</b> 334:19 430:17 493:8 502:21 518:20 523:17 529:8,11 536:4 541:13 542:21 554:8,9 584:4 588:11,17 590:19	<b>context</b> 367:4,14 429:8 465:10 470:3,5 583:5 617:1 <b>continue</b> 437:21 558:17 564:3 <b>continued</b> 299:14 301:1 302:1 432:5 <b>continues</b> 557:7 <b>continuous</b> 354:11 <b>continuum</b> 354:14 383:19 <b>contract</b> 342:11 603:21 604:21 <b>contracts</b> 400:7 454:12 479:2,3 <b>contractual</b> 342:8 345:12 <b>contradistinction</b> 478:9 <b>contrast</b> 556:20 <b>control</b> 324:19 393:1 406:1 537:13 <b>controlled</b> 501:20 <b>controls</b> 323:20 537:15 550:1 <b>convenience</b> 519:3,8 <b>conversation</b> 533:8 <b>conversations</b> 310:16 <b>conversely</b> 363:8 <b>conversion</b> 559:15 <b>convert</b> 560:4 561:5	<b>converted</b> 559:17 <b>convince</b> 368:4 369:17 465:1 561:15 <b>convincing</b> 442:18 <b>Cook</b> 580:11,14 581:7,13,16,17,1 9 620:21 622:1 <b>copies</b> 452:16 <b>copy</b> 513:12 522:2 524:10 <b>copyright</b> 299:1 300:2 323:17 324:20 458:1 467:3,14 469:16 477:8 594:17 <b>core</b> 585:8,12 586:6 <b>correct</b> 307:12,16 309:1,17 310:1 311:7 313:4,5,9,10,16 314:12,18,19 315:2,11 316:13 317:11 318:2 320:12 322:9 323:9 324:5,6 325:7,8,16 327:7,17 328:11,12,19 329:10,11,16 332:9 334:13,20 337:12 339:19 341:20 342:3,6 344:16 345:13 346:2,4,5 348:5 350:22 353:3 354:3 355:4 358:6 359:9,13 367:22 370:6 373:17 378:13 381:14
--	--	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 15

382:17,22	602:2,5,15,21	309:6 328:2,18	337:1,10,12
383:11 386:21	605:2	337:19 338:4	385:9 386:14
394:11 395:2	606:9,11,22	389:17 508:15	387:10 389:8,18
396:11 398:10	609:2 613:10	509:22 516:17	390:5 393:11
399:10	<b>correcting</b> 474:15	610:4 617:22	509:3 514:16
400:18,19 401:1	<b>correction</b> 519:13	619:18 625:11	517:10 518:2
402:4,13	<b>correctly</b> 321:22	628:9,12	520:13 526:9
403:2,18 404:11	332:1 364:19	<b>counsel-only</b>	578:13 605:13
406:9 407:14	390:17 531:13	393:14	625:9 628:1,2
408:9,18 409:21	<b>correlative</b> 503:13	<b>counterpart</b>	<b>courtroom</b> 458:13
410:16 411:3	<b>corresponding</b>	438:10	460:3 563:14
412:10 413:8,22	421:19	<b>countries</b> 451:1	<b>Court's</b> 316:4
414:10 415:17	<b>corroborate</b> 390:3	<b>country</b> 451:6	385:14 386:2
417:3,5 422:22	515:20	545:3 551:7,8	455:15
424:12	<b>corroborated</b>	604:2	<b>cover</b> 504:11
425:14,21	389:19	<b>counts</b> 497:20	515:21
426:7,8	392:6,9,19	<b>coup</b> 404:20	<b>covered</b> 403:14
428:10,18	<b>corroborating</b>	<b>couple</b> 392:12	421:21
433:12,15	391:15	410:10 450:5	<b>crash</b> 546:1
435:22 439:13	<b>cost</b> 435:4,5,13	481:1 484:11	<b>crazy</b> 461:8
443:16 445:1,2	437:6,15	536:14 550:2	<b>CRB</b> 299:5 477:13
446:2,5 448:13	438:15,19	590:1	<b>create</b> 332:2
449:16,18	505:14 533:1	<b>coupled</b> 587:13,14	411:14 469:20
451:16,19	540:12 543:15	<b>course</b> 327:9,18	547:3 586:11
455:11,12	550:18 552:3,8	328:16	589:17
457:4,13 458:2	553:9 605:21	338:1,3,8,17	<b>created</b> 325:21
467:7,8 474:9	<b>cost-effective</b>	348:16 361:2	378:15,20
476:19	437:8,13	367:12 387:2	411:22 502:8
479:11,12	<b>costly</b> 437:11	418:7 454:8	585:22 589:21
481:8,9 511:21	<b>costs</b> 311:10	471:19 502:10	590:1
531:14 553:7	433:8,13,16	557:1 571:4	<b>creates</b> 346:7,8
570:12 571:1	434:17 439:1	624:7	542:4
576:3,8,10,19	440:5,7 441:8,13	<b>court</b> 308:7	<b>creating</b> 348:17
577:1,2,4,7,10,1	442:17,21	315:10,14,20	435:4 523:14
4 578:9,15,21,22	443:1,2 491:12	316:1,2,7,9,12	<b>creative</b> 502:12
579:1 580:1	493:10,16	317:11 318:2,22	<b>credits</b> 342:18,19
584:21 585:5,18	539:19,20	319:1 320:11,18	<b>critic</b> 353:8,10
588:1,2,12,13,14	546:15 566:15	321:12 322:2	<b>critical</b> 623:6
,15,18,20 590:6	<b>counsel</b> 304:10	324:13,14	<b>CRJs</b> 621:9,12
593:20	305:9,10 308:18	325:7,15 329:12	
594:15,18		336:5	
596:13,14			
597:3,7 599:12			
600:12,15,18			
601:18			

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 16

<b>CRJ's</b> 573:16	<b>curve</b> 488:10	<b>dangers</b> 563:15	329:2,18,21
<b>cross</b> 303:3,7	<b>curves</b> 451:6	<b>dash</b> 523:6,21	330:15
458:18 525:18	<b>customer</b> 419:5	<b>dashboard</b> 436:6	331:13,17
573:16 574:21	435:9,18 436:17	525:6 537:10,15	339:17 348:13
<b>crossed</b> 525:17	527:1,5,10,13	539:4 544:18	349:9 367:21
<b>cross-examination</b>	559:17 560:5,11	587:15	389:13 439:17
307:3 392:20	565:20	<b>dashboards</b> 435:6	480:5
432:14 570:1	<b>customers</b> 340:14	<b>data</b> 398:15,19,20	<b>dealt</b> 436:8
575:9	371:15,17 372:4	399:5	<b>December</b> 565:7
<b>cross-examine</b>	413:17 414:2	403:11,12,13	606:7
326:13 515:11	423:22 425:18	406:14 413:8,15	<b>decide</b> 316:9 544:5
522:7	437:9 438:15	446:19 447:22	<b>decided</b> 314:21
<b>cross-examined</b>	535:11 555:15	449:1 484:12	319:12 366:14
458:17	556:7	485:16 486:2	410:12 417:4
<b>Crown</b> 495:20	560:13,14,17,20	558:16 578:20	543:4 544:7,11
<b>CRR</b> 628:18	561:2,3 562:6,16	579:3,8,11,20,21	600:17
<b>CSR</b> 628:18	563:1,6,7,16	,22 580:2 592:12	<b>deciding</b> 370:5
<b>cue</b> 537:17	564:1,12	593:1	372:20
<b>cumbersome</b>	565:6,12,14	<b>date</b> 307:17 381:9	<b>decision</b> 423:15
311:14	567:3,21 568:16	479:10 573:6	437:4 600:21
<b>CUNNIFF</b> 302:12	588:3	<b>dated</b> 515:5 581:7	601:1,4 607:14
<b>cunniff.martin@a</b>	<b>customization</b>	597:20,21	<b>decisions</b> 320:5
<b>rentfox.com</b>	384:3 504:18	<b>David</b> 301:3 595:8	326:1
302:17	507:3 508:5	626:22	<b>deck</b>
<b>curation</b> 586:17	<b>customize</b> 535:13	<b>day</b> 336:21 461:7	320:11,13,18,20
<b>curious</b> 619:9,15	541:17	484:18 523:9,15	321:5,8,13,19
<b>current</b> 307:20	<b>customized</b>	567:17 608:4	322:2,6 324:15
311:6 313:4	383:6,20 504:13	<b>days</b> 453:21 559:9	<b>declaration</b> 513:22
349:19 351:8	542:5	<b>dead</b> 430:15	<b>declined</b> 310:1
359:3 366:3	<b>cut</b> 366:18	<b>deal</b> 310:11 311:4	324:11
385:7 417:2	482:13,14	313:1 331:19,21	<b>declining</b> 403:8,15
425:14 532:21	<b>cuts</b> 482:4	335:10,22 348:7	560:1
565:17 572:11	<b>cycle</b> 548:18,22	395:3 405:8,21	<b>decompose</b> 429:9
574:5 623:14	549:3	412:21 454:9,21	<b>decrease</b> 502:16
<b>currently</b> 416:10	<b>Cynthia</b> 510:1	492:1 527:6	<b>deemed</b> 331:14
418:6,8		625:10	516:6
427:10,13	<u>D</u>	<b>dealers</b> 439:15	<b>deems</b> 545:20
462:15 510:19	<b>D.C</b> 299:2,11,17	<b>dealing</b> 491:7	<b>deeply</b> 563:8
530:5	301:9 302:15	557:11	568:20 569:12
	<b>daily</b> 527:7	<b>deals</b> 328:10	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 17

<b>default</b> 459:2	466:14 469:20	447:11	603:18
<b>defect</b> 468:12	488:10 502:13	<b>derived</b> 365:2,4,7	<b>description</b> 399:7
469:1 480:3	505:12 542:8	371:14 429:2	<b>design</b> 321:7
<b>defection</b> 468:16	<b>demanding</b> 452:21	<b>DeSanctis</b> 301:4	<b>designate</b> 621:18
469:6	<b>demonstrate</b> 623:5	303:9	622:13 624:20
<b>defects</b> 468:22	<b>demurring</b> 345:15	514:8,15,17,21	<b>designated</b> 620:11
469:2	<b>denied</b> 621:19	515:2 516:13,22	621:9 622:4,9
<b>Defendant</b> 515:7	<b>department</b>	517:6,19,22	623:11 624:14
<b>defer</b> 524:11	597:6,9	521:18 524:19	<b>designating</b>
<b>define</b> 499:1	<b>depend</b> 407:17	525:13,16,22	622:14,15
587:19	428:12 429:16	526:3 569:17,18	<b>designation</b>
<b>defined</b> 353:21	<b>depending</b> 402:9	570:3 571:12	621:21 624:11
496:19	627:7	572:3,8,9,21,22	<b>designed</b> 319:4
<b>definition</b> 364:20	<b>depends</b> 316:14	573:12	541:11
497:2 552:21	344:17 354:5	575:7,11,12	<b>desire</b> 359:1
573:5	362:3 364:1	581:2	558:10
<b>definitions</b> 439:8	387:22 429:5	582:1,4,11,17,21	<b>desk</b> 554:18
<b>deflated</b> 416:19	430:5 488:11	583:1,5 584:15	<b>despite</b> 544:3
<b>degree</b> 341:21	502:13	589:12	603:16
353:4 354:4	<b>deploy</b> 533:2	590:11,14,21	<b>detail</b> 441:2
442:1 468:11	539:20 544:6	591:7,8,20,21	<b>determination</b>
480:12 481:19	546:8,15 550:20	592:13 595:18	299:6 478:18
504:17 533:18	551:21	596:7 597:21	<b>determine</b> 353:17
548:16	<b>deployed</b> 531:5	598:10	395:7 407:13
<b>delay</b> 453:17	544:21	605:7,10,11,16,1	408:17 413:5
<b>deliver</b> 529:3,9,11	553:11,15 555:4	8 608:8,10,12	495:5
535:11	<b>deployment</b> 531:7	609:9	<b>determined</b> 321:2
<b>delivered</b> 547:21	552:6 554:10	610:2,15,16	333:5,6 386:18
<b>delivering</b> 536:3	<b>deposition</b>	611:16	500:16
<b>delivery</b> 319:17	309:2,13	612:11,12,19	<b>determining</b> 414:7
433:10 437:7	311:7,18	613:3 615:19,20	471:18
481:17 580:8	312:14,16	616:20 621:2,3	<b>develop</b> 533:2
<b>Delphi</b> 376:20	322:17 323:5,8	624:6	548:9
378:15 379:1	324:4 357:11	625:8,17,20	<b>developed</b> 512:15
<b>demand</b>	358:6 459:6	626:6	533:7 536:16,17
365:1,2,5,8,9	465:3 608:21	<b>describe</b> 492:21	550:8 580:7
371:14,15,16	622:5	512:7,9 524:1	<b>development</b>
457:12 460:5	<b>deregulating</b>	526:8 528:4	526:16
	488:2	552:11 557:4	
	<b>derive</b> 396:15	558:18	
		<b>described</b> 378:15	
		433:16 441:9	
		492:21 543:22	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 18

<b>device</b> 438:21 537:4,9,14 543:5 544:18 545:12 549:21 551:20 554:18	468:18 470:20 481:17 494:2 496:2 517:20 525:10 530:12 572:18 575:21 583:2 586:1 622:8 623:9	350:2,10,12 354:1 355:4 356:5 360:20 364:16 368:12,14 369:12 374:11 375:19 382:17 389:10 443:2 457:11 458:9,13,22 460:4,10 461:2,3 463:1,4,13,22 464:6 466:8 467:6 469:22 471:8,15 472:13 473:6 477:18 478:7,15 479:11,14,15 480:5,19 482:17 492:12 500:20 501:14 503:16 506:3 510:11 513:6,12,18 515:4 520:20 521:12 549:7 558:14 568:18 572:6,10,17 573:5,6,17,18 575:13 578:1 584:16 593:16 598:11 601:13 603:17 618:16 620:2,9,20	<b>disadvantage</b> 388:6 471:7 477:18 504:16 540:12 544:14 <b>disadvantages</b> 550:19 <b>disaggregated</b> 486:3 <b>disaggregation</b> 431:2 <b>disagree</b> 310:15 613:18 625:1 <b>disappear</b> 492:22 <b>disappears</b> 423:8 <b>disaster</b> 604:3 <b>disburse</b> 478:19 <b>discern</b> 616:22 <b>disclosed</b> 308:18 309:3,6 <b>discontinued</b> 416:11 486:18 <b>discount</b> 420:12,15 423:8 507:9,14 <b>discounted</b> 563:9 568:20 569:13 <b>discounts</b> 420:4 <b>discover</b> 328:7 <b>discovery</b> 308:20 314:14,17 327:8,10,12 328:3,5 329:9 330:2,5,7,16,22 332:8,10 338:9 401:21,22 402:1,6,22 403:7,9 458:8 472:1
<b>devices</b> 398:5 440:19 540:5,6,8 541:7,15 543:6 545:17 547:16 552:7 553:16 554:5 561:13 579:16 <b>dhandzo@jenner.</b> <b>com</b> 301:11 <b>dialogue</b> 478:21 <b>dichotomously</b> 351:1 <b>died</b> 376:11 562:12 <b>differ</b> 358:4 401:13 447:9 <b>differed</b> 420:19 <b>difference</b> 413:1 418:14 422:3 490:15 <b>differences</b> 399:21 <b>different</b> 306:6 333:17 350:13 352:12 356:12,18 357:5,20 358:9 386:22 399:19,20 400:3,11,12,13 407:21 411:20 412:12 417:18 418:7 420:2,9,19 421:7,8,10 422:13 453:10,19 457:22 458:5	<b>differentials</b> 550:18 <b>differentiated</b> 482:16 493:2 494:14,19 497:3 499:1,11 <b>differentiation</b> 493:12 496:21 <b>differs</b> 424:19 451:6 468:7,14 <b>difficult</b> 532:19 606:18 621:6 <b>digital</b> 299:7 319:17 328:10,12 329:2 333:11,21 447:20 448:7,19 453:1 477:2 481:8,17 498:10,15 512:5,16 <b>dipped</b> 574:7 <b>direct</b> 303:3,7 307:14,18 309:19 310:20 311:4 313:1,13 314:17,22 315:17 316:11 318:7 324:12 326:8 332:20,22 334:6,16,17 335:19 336:4,17 337:10 338:11 341:10 348:3,13 349:9,22	550:2,10,12 354:1 355:4 356:5 360:20 364:16 368:12,14 369:12 374:11 375:19 382:17 389:10 443:2 457:11 458:9,13,22 460:4,10 461:2,3 463:1,4,13,22 464:6 466:8 467:6 469:22 471:8,15 472:13 473:6 477:18 478:7,15 479:11,14,15 480:5,19 482:17 492:12 500:20 501:14 503:16 506:3 510:11 513:6,12,18 515:4 520:20 521:12 549:7 558:14 568:18 572:6,10,17 573:5,6,17,18 575:13 578:1 584:16 593:16 598:11 601:13 603:17 618:16 620:2,9,20 <b>directed</b> 504:21 <b>direction</b> 628:7 <b>directives</b> 390:9 <b>directly</b> 318:17 326:6 333:9 334:7 337:11 341:15 375:7 519:8 526:14 527:3,5 546:6 <b>director</b> 525:18	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 19

<b>discrete</b> 360:4	<b>District</b> 299:20	623:16	322:16,22
<b>discuss</b> 376:6	628:19	<b>document's</b>	326:11 331:10
473:19 518:3	<b>diversion</b> 362:19	611:17	349:22 355:15
583:17	457:12 460:5	<b>dog</b>	357:9 377:1,22
<b>discussed</b> 346:14	466:14 469:20	482:4,5,11,13,14	388:11
573:13 593:16	<b>divide</b> 341:16	<b>dogs</b> 482:3	389:9,10,17,22
594:10	395:9 408:5	<b>dollar</b> 395:8 396:1	390:19 391:8,17
<b>discusses</b> 415:19	409:1,6	401:5	392:7,22
515:21	<b>Docket</b> 299:5	<b>dollars</b> 342:17,19	393:9,20 394:7
<b>discussing</b> 420:21	<b>document</b> 368:20	539:15 551:6,9	402:11 403:17
523:6 542:12	382:7 405:11	<b>domain</b> 481:8	405:21 406:7
<b>discussion</b> 330:15	416:4 434:2	<b>dominant</b> 356:13	414:9,11,21
368:10 405:7	461:1,20 462:1	357:17,21	415:2,14
487:22 491:13	464:11 472:1,5	411:17	418:1,17
492:2 498:7,10	473:22 476:11	470:17,22	422:3,15,19,22
556:13	513:17 515:9,13	<b>dominated</b> 401:10	423:21 424:3
<b>discussions</b> 328:6	516:21 518:1,2	<b>done</b> 311:16	425:13,20
<b>dislike</b> 585:20	571:16,22	312:13 332:21	426:6,19 427:20
<b>disparity</b> 385:22	572:4,14,21	334:2 368:7	430:10 432:17
<b>displays</b> 539:4	575:1,8	395:19,20	433:5 436:12
<b>disrupt</b> 604:13	581:5,9,11	402:12 421:8,13	443:8 444:4
<b>disruption</b>	582:5,14	455:12 595:12	450:17
455:10,13 469:3	583:6,15,21	599:7 608:4	455:4,9,19
<b>distinct</b> 458:1	590:11	615:20	456:15 461:20
<b>distinction</b> 323:19	593:4,8,11,13	<b>Donnelly</b> 509:22	465:16 508:22
343:19	595:19,21 596:9	<b>door</b> 392:7	<b>draft</b> 330:18
<b>distinguish</b> 348:10	598:12 599:1,7	<b>double</b> 361:17	<b>dramatically</b>
<b>distribute</b> 513:3	608:2,9,15	<b>doubled</b> 308:5	366:17 623:9
<b>distributed</b>	609:5,10 610:6	<b>doubling</b> 363:4	<b>draw</b> 582:12
382:11,16	611:10 612:9,21	<b>doubt</b> 337:20	586:15 602:18
<b>distributee</b> 478:10	613:5	<b>Douglas</b> 620:22	617:15
<b>distribution</b>	616:16,18,21	<b>download</b> 453:1	<b>drawback</b> 541:10
333:12 350:17	617:16	<b>downloads</b> 447:21	<b>drive</b> 559:22
351:7 352:18	<b>documentation</b>	448:7 498:11,16	<b>driven</b> 548:17
354:6 370:18	574:22	<b>downplayed</b> 498:8	554:4
438:16 524:7	<b>documents</b> 327:16	<b>Dr</b> 305:17 306:2	<b>driver</b> 537:13
<b>distributors</b>	393:11 402:6	307:6,8 308:9	546:1 603:5
439:14	403:7,9 460:14	309:17	<b>driving</b> 461:8
	464:12		545:21 579:14
	473:15,18 517:9		<b>drop</b> 366:15 421:5
	520:22 574:5		<b>dropped</b> 421:4
	612:1 621:4,7		



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 20

528:18 553:9 <b>dropping</b> 421:10,20 <b>ducked</b> 509:20 <b>due</b> 420:2 485:13 <b>duly</b> 305:5 432:6 510:8 <b>duration</b> 563:9 <b>during</b> 338:10 347:15 375:17 423:16 452:19 460:3 559:11 566:14,16 603:19 604:14,20 623:19 <b>DVR</b> 542:20 <b>dying</b> 532:4,6,12	545:12,13 <b>easy-to-use</b> 555:22 <b>Eclipse</b> 374:21 <b>economic</b> 356:11 438:2 563:16 604:2 <b>economics</b> 429:3 467:20 <b>economist</b> 470:13 <b>economy</b> 557:13 558:9 604:16 <b>effect</b> 327:4 424:10 429:4 438:12 450:1,22 451:5,10,12 453:10 460:12 469:6,10 481:6,21,22 482:5,6 483:1 487:20 488:2 498:1,4,8,13,14, 18 499:4 501:16,17,21 503:8 565:18 567:4 601:14,18 <b>effective</b> 499:7 564:19 <b>effects</b> 450:3 552:21 <b>effort</b> 374:9 463:16 469:19 <b>efforts</b> 477:19 <b>eight</b> 557:12,15 <b>either</b> 335:4,10 339:9 476:7 487:5 497:10 499:18 524:21 532:10 540:2 550:1 557:16 560:7	561:4,11,16,17 562:10 <b>either/or</b> 354:14 <b>elaborate</b> 489:2 <b>elasticity</b> 481:19 502:13 568:14 <b>Electric</b> 512:12 <b>Electric's</b> 512:22 <b>electronics</b> 511:20 512:11,13 513:1 <b>element</b> 493:6 <b>elicit</b> 471:6 <b>elicited</b> 445:8 458:11 <b>eliminate</b> 427:11 466:13 <b>eliminated</b> 420:17 <b>eliminates</b> 469:17 480:18 <b>else</b> 362:22 366:21 379:16 384:9 423:4 440:20 454:9 457:15 558:9 564:6 588:1 612:5 614:9 621:18 <b>else's</b> 493:9 <b>elsewhere</b> 500:5 <b>e-mail</b> 472:9,16,17,21 579:7,14,19 581:6,12 <b>embedded</b> 321:10 545:16 546:16,18 547:2,7,16,17 548:1,4 550:8 <b>embedding</b> 545:18	<b>emerge</b> 337:9 <b>emergence</b> 584:17 <b>Emmy</b> 374:7 <b>emphasized</b> 348:4 <b>empirically</b> 317:15 <b>employed</b> 510:19 628:9,12 <b>employee</b> 628:11 <b>employment</b> 346:20 <b>enamored</b> 554:4 <b>encompassing</b> 388:12 <b>end-all/be-all</b> 545:5 <b>endorse</b> 369:18 <b>engage</b> 443:3 499:7 <b>engaged</b> 314:4 <b>engages</b> 528:5 <b>engaging</b> 459:3 <b>engineering</b> 526:15 <b>enormously</b> 468:17 <b>enter</b> 316:11 334:12,15 463:12 471:18 <b>entered</b> 479:10 503:17 <b>entering</b> 464:15 478:7 <b>entertainment</b> 523:15 529:4 <b>entire</b> 420:8 463:17 482:10 574:12,13,19
<hr/> <b>E</b> <hr/>			
<b>Eardrum</b> 376:7,10 <b>earlier</b> 380:10 395:20 441:10 450:19 491:5 497:22 570:8 592:1 <b>early</b> 431:9 544:20 557:20 <b>earning</b> 610:21 <b>earnings</b> 608:22 610:3,11,18 611:7 <b>earth</b> 430:20 530:17,18 <b>easier</b> 444:16 <b>easily</b> 351:22 385:5 587:9 617:18 <b>easy</b> 539:7,12			

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 21

<b>entirely</b> 366:15	343:8 370:4	414:14 456:20	393:10
<b>entities</b> 505:1	420:20 464:16	457:3,5,11	<b>examined</b> 305:5
<b>entitled</b> 392:4	469:16 488:14	458:12,15,22	432:6 510:9
577:4 589:7	<b>established</b> 479:9	459:17	<b>examiner</b> 582:13
596:11	507:12,14	460:1,3,19	<b>example</b> 343:16
<b>entity</b> 319:13	535:20	462:14,18	346:17 347:9
335:11	<b>estimate</b> 316:8	471:14,19	360:17 365:13
<b>entrenched</b>	336:9 337:4	474:5,21	366:12 372:8
536:7,9	395:5,22 401:19	483:3,12	391:13 405:20
<b>entry-level</b> 535:16	402:15 405:14	489:9,11 514:7	411:19 430:9
<b>Entune</b> 536:20	<b>estimated</b>	518:5 521:16	439:20 441:14
538:1	576:10,22	522:13 525:19	443:4 450:5
<b>environment</b>	<b>estimates</b> 407:20	558:1 572:4	494:14,22
340:5 349:19	549:9	582:5,10 590:20	495:16 518:18
399:8 527:18	<b>euphemism</b>	591:5 598:2,9	529:19 537:8
<b>epidemic</b> 564:15	527:10,13	609:10 610:9	541:19 546:19
<b>equal</b> 315:14	<b>Europe</b> 454:11,14	616:16 620:17	585:4 588:11
362:22	558:9	623:1 625:10	<b>examples</b> 373:3
<b>equally</b> 327:10	<b>European</b> 451:1	<b>evident</b> 560:5	374:15
<b>equilibrium</b>	<b>evaluations</b> 326:3	<b>evolution</b> 515:22	<b>except</b> 325:22
468:13,17 469:7	<b>event</b> 310:19 413:7	<b>evolved</b> 325:15	337:14 366:14
470:2 493:11	424:17 442:3	<b>evolving</b> 542:8	402:5 472:7
<b>equipment</b> 562:10	<b>eventually</b> 387:20	<b>exacerbated</b>	548:5 584:7
<b>equivalent</b> 313:3	<b>everybody</b> 317:16	562:22	<b>exception</b> 520:17
347:10	341:6 348:10	<b>exact</b> 553:19	<b>excerpt</b> 465:5
<b>error</b> 420:2,7	351:17 358:21	568:14	<b>excess</b> 462:12
<b>escalating</b> 544:22	359:1,11,14	<b>exactly</b> 310:5	<b>exchange</b> 504:7
<b>escapes</b> 625:7	366:20 496:10	316:1 317:2	<b>exchanges</b> 313:21
<b>especially</b> 343:11	519:16 529:6	320:16 331:2	<b>exclude</b> 485:13
<b>ESQUIRE</b>	<b>everyone</b> 558:4	333:16 334:9	<b>excluded</b> 384:19
300:7,8,9,10,11	<b>everything</b> 397:3	345:10 347:14	517:2
301:3,4,5,6	485:5 514:12	389:4 422:18	<b>exclusive</b> 453:2,19
302:3,4,12	625:12	442:10 485:8	454:9,12,17
<b>essence</b> 469:14	<b>everywhere</b> 551:7	497:14 518:14	455:1 584:4
525:13	558:9	583:13 594:22	588:11,16
<b>essential</b> 351:21	<b>evidence</b> 320:5,6	595:15 598:14	<b>excuse</b> 492:10
<b>essentially</b> 308:10	388:20	<b>examination</b> 432:5	575:3 626:11
	389:21,22	456:12 458:20	<b>excused</b> 483:19
	392:10 402:21	461:2 510:11	508:21
		515:22 568:18	
		593:16 616:12	
		<b>examine</b> 388:8	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 22

<b>executives</b> 338:5 525:1 <b>exemption</b> 516:15 <b>exercise</b> 500:11 <b>exhibit</b> 322:16,18 323:1 357:10 377:2,14,16,17 378:1 380:12 414:12,16,17,22 415:9 417:1 426:2 443:20,22 444:5 450:13,17 461:1,3,6,10,13 471:22 472:3 473:22 474:2,20 475:3,9 476:12 483:3,11 513:5,7 514:7 515:4 521:12,14,15 522:16 571:9,14 575:14 577:20 580:21 581:4 582:8,9 589:4,9 591:4 596:4,10 598:7,8 608:5,14 616:17 <b>exhibits</b> 303:11 304:1,10 474:6 513:13 514:3,10 515:1,3 517:4 521:19,21 537:18 577:17 621:10 623:18,21 625:15 626:1,3,9 <b>exist</b> 330:6 407:3 467:13 468:2,7 470:7,10 481:18 493:14 534:9 <b>existed</b> 369:12 578:7 <b>existence</b> 333:22	453:16 480:17 <b>existing</b> 340:21 437:5 506:13 <b>exists</b> 427:10,13 467:2 481:18 518:2 <b>expand</b> 550:22 <b>expanding</b> 499:3 <b>expect</b> 352:13 430:13 489:8 <b>expectation</b> 315:19 460:11 463:15 <b>expectations</b> 334:21 335:17 339:10 361:20 602:9,11 <b>expected</b> 437:21 480:13 602:5,12,14 <b>expecting</b> 596:2 <b>expenditure</b> 607:7 614:5 <b>expenditures</b> 607:8,20 613:17 615:5 <b>expensive</b> 438:21 <b>experience</b> 458:14 519:1 <b>expert</b> 312:18 327:12 428:2 557:13 <b>experts</b> 481:15 517:7,10 <b>expire</b> 476:3 532:22 569:2 <b>expires</b> 628:22 <b>explain</b> 352:7	536:11 564:22 567:7 623:8 <b>explained</b> 371:10 593:17 <b>explaining</b> 320:20 <b>explanation</b> 313:19,20 317:13 320:2 349:11,12 <b>explicate</b> 419:20 <b>Explicitly</b> 460:9 <b>exploration</b> 491:16 <b>expressed</b> 407:7 464:11 <b>expressions</b> 341:4 <b>extensive</b> 484:18 <b>extensively</b> 453:7 579:18 605:19 617:19 <b>extent</b> 308:13,16 319:21 369:19 441:20 516:6 620:16 <b>extra</b> 455:2 <b>extraordinary</b> 535:7 <b>extremely</b> 311:21 333:13 355:13 <b>extremes</b> 431:3 <b>ex-users</b> 590:8 <b>eyes</b> 351:6 <hr/> <b>F</b> <hr/> <b>face</b> 558:17 <b>Facebook</b> 579:7,14	<b>faced</b> 623:10 <b>faces</b> 499:13 <b>facilitating</b> 472:13 <b>facing</b> 463:20 466:18 527:5 <b>fact</b> 309:22 329:1 330:14 344:21 347:5,17 348:14 359:21 378:20 379:12 389:12,21 425:8 427:7 429:1 437:3 438:19,20 440:19 449:17 455:20 460:19 469:14 471:15,20 478:6 492:19 494:11,18 500:3 517:12 518:2 522:14 528:2 535:3 536:2 548:17 553:1 554:12,19 556:13 595:6 601:20 602:17 604:6 617:16 622:13,22 624:15 <b>factor</b> 349:14 411:18 503:4 <b>factors</b> 488:14 <b>facts</b> 521:22 <b>failing</b> 509:14 <b>failure</b> 614:10 <b>fair</b> 311:19,20 333:7 491:7 606:3 627:11 <b>fairly</b> 350:19 375:13 421:11
--	---	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 23

475:17 <b>Fakler</b> 302:3 456:5,7 483:5,7 508:19 520:9 598:5 616:4,5 <b>fakler.paul@aren tfox.com</b> 302:9 <b>fall</b> 351:12 425:18 526:12 <b>falls</b> 396:1 <b>false</b> 403:22 <b>familiar</b> 427:21 428:1 516:11 517:2 527:16 566:10 571:5,21 581:9 589:15 596:20,22 <b>fan</b> 379:3 <b>fan-based</b> 379:5 <b>fan-generated</b> 379:6 <b>fans</b> 379:14,17 <b>FarmVille</b> 454:3,4 <b>faster</b> 344:7,15 548:22 555:4 <b>favor</b> 319:1 320:1,12,18 321:13,15 322:3 324:15 491:14 <b>favorable</b> 319:5 320:8 <b>avored</b> 318:8 475:10 <b>favors</b> 453:14 <b>FCC</b> 566:11,13 594:1,5 <b>fear</b> 588:2,9 <b>feature</b> 321:19	323:13 324:18 341:10 348:3 501:19 544:12 <b>features</b> 360:2 411:6 496:3 <b>February</b> 452:15 <b>fee</b> 346:1 485:13 535:17,19 566:5,19 567:1,16 578:20 594:13,16 599:3,6 600:2,15 <b>feedback</b> 326:8,9 327:2,3 550:9 <b>feel</b> 527:19 621:6 <b>fees</b> 567:3 <b>fender</b> 430:5 <b>fenders</b> 429:11 <b>fewer</b> 489:8 <b>Fifth</b> 300:13 <b>figure</b> 404:6 408:3 409:19 419:1 433:6 448:5 490:9 572:16,17,19 576:1 <b>figures</b> 572:14 <b>file</b> 329:8 330:21 520:20 <b>filed</b> 305:21 571:17 620:3,10 <b>files</b> 472:1 474:12 571:6 573:19 <b>filing</b> 571:17 574:6 <b>final</b> 481:1 502:14 503:7 <b>finally</b> 562:9 566:2 574:11 622:12	623:17 <b>finance</b> 597:6 <b>financial</b> 357:6 358:2 359:17 573:7 574:5,7 597:6,9 <b>financially</b> 628:13 <b>financials</b> 574:9 <b>finding</b> 523:16 551:4 <b>findings</b> 522:14 622:22 <b>fine</b> 309:14 377:5 394:2 516:20 518:4 <b>fingertips</b> 626:7 <b>finish</b> 603:9 <b>firm</b> 357:16 359:18 470:15 497:4 499:5,12,13 <b>firmly</b> 536:7,9 <b>firms</b> 356:11,13 357:17,18,19,21 358:9 470:17,18,20,22 499:3 <b>first</b> 305:4 311:9 312:4 313:2 323:3,8 342:17,19 352:10 369:15 376:4,14 428:7 429:5 430:10 436:8,9 447:5 453:13 454:21 465:18 466:10 488:3,5 500:12 510:8 514:16 515:3 521:20	528:2,12 536:17 541:7 542:14 546:6 549:12 550:16 564:18 565:5 570:12 572:10 573:15,22 581:5 584:8 589:5 600:2 601:21 602:4,14 608:15 613:8 616:9 621:22 624:6 <b>firsthand</b> 339:1 518:22 <b>fit</b> 370:17 371:11 372:17 <b>fits</b> 353:4 <b>five</b> 309:22 382:14 509:5 528:13 533:11 534:9 535:8 551:16 552:17,18 553:4 554:14 569:8,9 574:3 618:1 622:16 <b>fix</b> 607:2 <b>fixed</b> 493:10 <b>flag</b> 390:5 <b>Flashdance</b> 374:20 <b>flat</b> 345:22 561:17 <b>fleet</b> 606:20 607:13 <b>flip</b> 576:6 593:3 <b>Flipping</b> 465:15 <b>fly-by-night</b> 508:11 <b>FM</b> 537:16 <b>focus</b> 357:8 358:10 397:17 459:15
---	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 24

491:21 494:17,18 <b>focused</b> 539:22 <b>Focusing</b> 590:9 <b>follow-up</b> 508:16 619:17 <b>footnote</b> 394:9 416:16 418:20 517:17 518:16 566:2,3,22 567:11 576:15 <b>footnotes</b> 440:17 <b>footprint</b> 530:2 <b>force</b> 499:21 <b>Ford</b> 544:8,17 <b>forecast</b> 577:15 604:1 <b>foregoing</b> 628:4 <b>foreseeable</b> 531:11 <b>forever</b> 569:4 <b>forgive</b> 562:11 <b>forgotten</b> 556:16 <b>form</b> 435:7 438:2 467:1 571:6,17 586:21 <b>formally</b> 620:16 <b>format</b> 523:4 <b>formed</b> 530:11 <b>former</b> 374:16 <b>forms</b> 481:17 <b>formula</b> 400:16 <b>forth</b> 316:2 463:7 484:4 485:18 <b>fortunes</b> 574:7 <b>forum</b> 480:10 <b>forward</b> 311:13	473:6 536:8 567:3 <b>forward-looking</b> 312:17 <b>foundation</b> 610:14 <b>founders</b> 530:14,19 <b>fourth</b> 361:1 375:18 462:4 534:4 615:16 <b>Fox</b> 302:5,13 <b>fraction</b> 342:15,19 366:10 395:17 398:12 408:10,14,15 421:21 424:22 425:1 499:17 <b>frame</b> 550:5,13 583:7 606:12 607:11 613:22 <b>framed</b> 394:4 <b>frankly</b> 522:22 529:6 <b>Frear</b> 318:17 595:8 612:5 626:22 627:4 <b>Frear's</b> 461:3 <b>free</b> 348:22 397:9 398:9 399:9 467:5 535:10,16 543:11 560:7,8 561:13 578:15 585:14 <b>FREEDMAN</b> 301:5 <b>freedom</b> 425:21 426:5 427:6,9,16 430:12 <b>free-to-user</b>	585:13 <b>frequency</b> 489:18 <b>frequently</b> 342:4 367:11 520:16 610:20 <b>Friday</b> 627:6 <b>friend</b> 564:5 <b>fringe</b> 356:11 357:18,19 470:18,19 <b>front</b> 414:22 415:21 465:4 475:2 513:17 <b>fuel</b> 532:16 <b>full</b> 345:2 376:14 465:18 510:16 524:22 <b>full-price</b> 569:10 <b>fully</b> 345:8 478:7 <b>function</b> 400:8 417:16 <b>fundamental</b> 431:2 568:11 569:6 586:3 603:5 <b>fundamentally</b> 526:15 536:21 559:4 587:12 <b>furious</b> 562:14 <b>future</b> 339:10 340:15,16 342:14 504:12 507:19 531:11 558:16 574:17,18,20 584:19 <hr/> <b>G</b> <hr/> <b>Gaga</b> 367:4,9	451:18 452:9 453:18 454:6 <b>Gaga's</b> 453:12 <b>GagaVille</b> 454:5,6,10 <b>gain</b> 358:16 <b>gambling</b> 363:10 <b>game</b> 429:14 <b>games</b> 538:13 579:7 <b>Gangsta's</b> 374:21 <b>GARRETT</b> 301:6 <b>Gary</b> 621:1 <b>gee</b> 391:21 <b>general</b> 309:10 323:21 325:22 326:6 351:9 371:16 376:5 383:20 398:17 493:5 509:21 512:12,22 516:16 590:5 <b>generally</b> 342:8 374:4,5 427:21 428:1 <b>generates</b> 366:21 <b>generating</b> 423:2,3,4 <b>generation</b> 534:4 <b>generic</b> 376:2 379:21,22 380:3 410:9,19 495:6,10,13 496:4,5 <b>genre</b> 351:14 352:17 355:7,11 367:18 371:20,21 373:1
---	---	---	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 25

469:2 <b>genres</b> 351:7 352:12 365:18 <b>George</b> 343:16 376:7,11 378:5 <b>geostationary</b> 530:15 531:15 <b>Gertz</b> 318:15 369:15 485:7 627:1,2,4 <b>gets</b> 344:19 348:21,22 359:14 429:15 492:16 498:18 560:18 585:21 <b>getting</b> 324:9 344:6,13,14 345:6 349:3,17 358:13 359:2,6,7,22 360:4,10,12,16 363:9,15 364:4,8 418:2 423:7 435:5 442:12,15 494:8 498:16 506:7 521:9 529:21 553:14 564:1 566:10 <b>giddy</b> 558:5 <b>given</b> 308:10 342:17 357:7 361:22 362:16 365:9 420:6 476:3 497:8 527:17 555:3 606:20 628:8 <b>gives</b> 365:21 <b>giving</b> 309:9 420:4 506:14 572:18 <b>glad</b> 500:18	<b>glevin@jenner.co</b> <b>m</b> 301:14 <b>goal</b> 419:22 <b>God</b> 562:11 <b>gone</b> 308:3 602:1 <b>Gotshal</b> 300:12 620:7 <b>govern</b> 326:19 <b>Government</b> 531:1 <b>GRAMMY</b> 374:8 <b>grand</b> 355:20 <b>grant</b> 503:2 <b>granted</b> 306:1,19 506:3 624:9 <b>great</b> 306:11 355:17 391:22 392:3 494:22 519:22 536:6 541:19 597:18 <b>greater</b> 400:15,16 602:5 <b>greatest</b> 360:13 <b>grew</b> 600:11 <b>Grier</b> 510:1 <b>gritties</b> 428:4 <b>grocery</b> 495:17 <b>gross</b> 409:4 488:19 <b>ground</b> 539:16 551:10 624:8 <b>ground-based</b> 529:17,22 530:2 <b>grounds</b> 515:14 517:4 <b>group</b> 319:12 350:2,11 352:12 443:15 499:6	526:19,20,22 562:9 564:13 589:20 <b>groups</b> 561:3 <b>growth</b> 490:11 600:8 602:4 603:5 604:9 617:22 618:5,9,11 <b>guarantee</b> 349:13 538:14 <b>guess</b> 308:11 355:16 414:12,14 418:22 423:5 424:2 441:17 492:18 502:5 535:9 537:19 <b>guidance</b> 602:7 603:1 <b>Guilty</b> 361:4 <b>gun</b> 608:11 <b>guy</b> 359:2 378:16,21 <b>guys</b> 356:17 357:2 <hr/> <b>H</b> <hr/> <b>habits</b> 626:12 <b>half</b> 311:11 313:6,8 339:15 458:20 476:4 557:18 <b>hand</b> 471:8 <b>handful</b> 355:7 451:1 <b>handing</b> 589:3 596:8 <b>hands</b> 533:20 <b>Handzo</b> 301:3	303:4 305:18 306:22 307:1,5 308:6 309:7,14,16 318:19 322:15,21 324:6,8 350:6,8 356:1 361:9 362:21 367:7 368:21 377:5,13,15,21 380:12,13 381:6 382:13 389:6 390:18,20 391:1,5,8 393:6,15,17 394:2,6 405:3,17 414:20 416:6 422:1 431:10 432:10,12,16,20, 21 433:4 434:4,7,10 444:3 448:10 450:16 455:14,19 458:16 459:1,7 461:4 465:4 471:5 474:8 478:5,21 479:8 483:8,9,16,17 508:18 616:4 <b>Handzo's</b> 390:9 392:18 <b>happen</b> 338:20 344:20 345:3 479:1 557:18 562:13 584:2 587:16 607:13 614:1 619:6 <b>happened</b> 314:18 345:4 441:2 553:4 <b>happens</b> 453:8 502:12 507:11
--	---	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 26

560:2 614:16 <b>happy</b> 558:5 590:21 <b>hard</b> 362:1 412:21 489:9 579:10 <b>hardware</b> 440:7 442:2,6 528:20 539:19 540:10 548:16 549:3 <b>hate</b> 367:3 475:19 <b>Hauser</b> 416:2 422:3,15,22 424:3 425:13,20 426:6 486:16 488:13 <b>Hauser's</b> 414:9,11 415:2,14 416:8,22 418:1 422:15,19 423:21 426:19 427:20 430:10 486:10 <b>haven't</b> 306:18 312:5 318:11 375:22 497:7 561:14 <b>having</b> 305:4 322:14 328:4 357:4 427:18,20 432:5 436:12 449:5 452:20 475:20 482:13 510:8 544:13 614:4 <b>HD</b> 552:22 553:9,11,18 554:2,12,20 555:4,5 556:13 <b>head</b> 537:1 554:12 <b>head-faked</b> 557:15	<b>heading</b> 369:5 <b>health</b> 606:20,22 <b>hear</b> 344:9 353:12 354:13 397:8 490:5 495:3 561:4 625:4 <b>heard</b> 472:21 473:1 474:11 520:3 570:8 578:2 <b>hearing</b> 436:13 460:3 477:14 574:6 620:11 627:14 628:4,7,10 <b>hearsay</b> 515:13,16 516:4,16 520:13,17 <b>Heart</b> 374:21 <b>heavily</b> 544:10 545:15 <b>he'd</b> 390:9 <b>held</b> 299:15,16 511:1 535:8 <b>help</b> 596:1 <b>helpful</b> 432:22 514:13 521:9 583:5 <b>helping</b> 500:19 <b>hemispheres</b> 531:14 <b>HEO</b> 530:20 <b>hereby</b> 628:3 <b>here's</b> 374:12 390:2 429:21 <b>hereto</b> 628:12 <b>he's</b> 380:7 390:3 485:7 518:1	613:12 622:3,6 <b>hey</b> 541:20 561:11,18 563:2 <b>high</b> 349:20 495:9 552:21 <b>higher</b> 308:10 340:20 383:21 394:22 396:9 401:1,3,7,8 404:10 407:22 412:16 507:4,6 559:20 563:11 <b>highest</b> 401:9 402:14 477:1 <b>highly</b> 351:19 390:17 <b>high-quality</b> 536:3 <b>high-speed</b> 551:19 <b>hijack</b> 393:13 <b>hire</b> 345:19 346:1,10 347:9 348:8 <b>historically</b> 358:15 436:7 <b>history</b> 337:22 614:11 <b>hit</b> 366:8 367:18 372:6 374:16 437:11 519:10 604:12 <b>hits</b> 351:8 352:19 353:5 370:6 <b>hitting</b> 562:21 <b>hold</b> 432:20 <b>holder</b> 466:2 <b>Hollywood</b> 452:20 <b>home</b> 542:17,18 617:10,19	<b>Honestly</b> 517:11 <b>Honor</b> 392:12 456:7 483:7,17 508:17,18 509:13 513:14 514:9 515:17 516:14 518:15 519:5 520:9 521:17 525:17 553:6 554:21 569:18 581:18 583:10,14 592:6 595:10 609:12,14 611:19 615:21 616:5 618:10 619:16 620:1 <b>Honors</b> 305:15 458:19 472:6,12 473:5 474:5,16 483:2 513:4 516:3 522:17 528:16 541:1 542:18 555:20 561:1 563:18 566:9 569:16 573:11 604:11 606:14 617:6 <b>hood</b> 429:12 <b>hope</b> 361:17 362:8 <b>hopefully</b> 608:3 <b>hot</b> 482:3,5,11,13,14 <b>hotspot</b> 547:9,10,17 <b>hour</b> 458:20 523:15 <b>hours</b> 398:6 <b>housekeeping</b> 305:17 619:21
---	---	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 27

<b>Howard</b> 588:12	513:6 514:14	388:14 389:6	600:1,2,4 601:3
<b>huge</b> 388:6	584:3	390:7,8,16 391:1	603:6,10 605:15
<b>hundred</b> 594:20	<b>identify</b> 393:11	392:4 404:3	607:9 608:2,13
<b>hundreds</b> 380:6	472:7 493:19	412:19	609:9 614:8
541:4 551:9	509:14 566:6	415:12,22	615:10,12,20
<b>hundredth</b> 356:8	597:19 620:5	416:21 417:22	618:1,2,10
<b>hurt</b> 604:13	<b>ignore</b> 341:7 367:2	420:20 427:18	619:8,15 620:7
<b>hypothesized</b>	<b>ignored</b> 340:9	428:2,8 433:1	626:19
314:20	<b>ignoring</b> 496:8	434:7,13 435:10	<b>image</b> 544:4
<b>hypothetical</b>	<b>iHeartRadio</b>	436:12,14	<b>imagine</b> 561:1
505:18	534:19	440:16 441:16	<b>imbalance</b> 471:7
<b>hypothetically</b>	<b>II</b> 299:5,7	443:8,13 458:16	477:18
339:11	<b>III</b> 385:9 386:2,13	459:5 461:4,16	<b>immediate</b> 450:22
	387:20 402:12	462:3 465:7,8	482:5
	406:8	470:13 471:21	<b>immediately</b>
	<b>I'll</b> 361:10	472:6,19 474:18	614:18
<b>I</b>	414:12,15	475:17 479:17	<b>impact</b> 333:14
<b>iconic</b> 352:21	456:16 472:11	484:4,22 485:6	466:6,9 481:2
353:5 366:22	474:4 493:2	489:15	601:5 607:14
367:3	554:22 587:5	490:5,9,13	618:4
<b>I'd</b> 323:1 390:4	595:19,21 605:7	494:3,8 495:2	<b>impacted</b>
406:16 553:3	<b>illustrate</b> 515:20	496:6,8 498:2	333:10,12 334:8
563:18	<b>illustrated</b> 543:20	500:18,22 503:3	<b>impeach</b> 390:13
572:3,13,15	<b>illustration</b> 332:18	507:13 508:2	<b>implementation</b>
580:16 595:11	<b>illustrations</b> 373:9	514:17,18 515:7	564:18
598:1,11 599:18	<b>illustrative</b> 516:10	519:15 520:9	<b>implementing</b>
609:9 617:20	518:10,12,13	527:11,19	544:8 565:22
<b>idea</b> 337:20 412:20	<b>I'm</b> 305:15	545:13 549:18	<b>implication</b> 359:17
489:5 537:3	310:14,17	554:11,16	391:21 392:5
558:7,8 604:12	311:16,20	556:15	<b>implications</b>
<b>identical</b> 359:11	312:12,13	557:21,22	505:14
493:3,4	320:20 321:22	558:11	<b>implicit</b> 348:20
<b>identification</b>	322:15,22	567:8,18,19	414:7 433:7
322:19 377:18	326:13 331:2,5	571:13,19	<b>implied</b> 370:9
414:18 444:1	344:9 350:3,5	572:22 576:8	409:20
450:14 461:14	353:12 355:1	577:12 578:22	<b>imply</b> 392:9,15
472:4 474:3	356:14 363:12	579:15 581:11	422:20
513:8 571:10	366:4 368:1	582:3,21	<b>implying</b> 389:18
580:22 589:10	374:5 377:1	585:8,9,11	394:4
596:5,10 608:6	383:17 384:18	586:19,20	
<b>identified</b> 332:1		588:21 591:19	
391:9 472:9		592:4,20 593:10	
		594:22 595:20	
		596:22 597:10	
		598:17,21	



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 28

<b>import</b> 478:6	356:15,19 357:6	417:5 426:12	350:17 473:14
<b>importance</b>	358:20,22	599:3	<b>indicate</b> 306:9
464:19	359:8,10 360:12	<b>increase</b> 359:16	460:15 472:7
<b>important</b> 323:12	362:19 363:7	361:17 462:10	511:18
334:1,3,4 349:14	463:20 466:15	468:4 477:12	<b>indicated</b> 306:7
355:10,19,20	467:10	490:20	339:13 459:2
366:8 370:20	468:2,7,11	502:11,16	501:13
372:10,13 380:1	469:17 470:19	503:6,10 564:18	503:18,22
467:1 498:3	480:18,21 492:2	565:5,16,19	556:21 624:18
547:11 565:11	501:6	566:1,15 567:2	<b>indicates</b> 516:5
585:15 617:21	<b>incentives</b>	593:16 600:17	548:7
623:13	317:15,18	601:5,17	<b>indicating</b> 405:16
<b>importantly</b>	356:11,12	602:14,20	406:5 408:20
537:12 539:6	357:1,5,19,20	<b>increased</b> 457:7	434:19 437:9
573:22 574:11	470:21 479:18	460:5 506:8	439:5 473:16
<b>impose</b> 594:12	480:3 539:22	599:11	479:9 538:21
<b>imposed</b> 388:7	555:3	<b>increases</b> 346:12	539:3 553:16
599:6 600:2	<b>incentivizing</b>	502:7	<b>indie</b> 307:18
<b>impression</b> 387:11	539:18	<b>increasing</b> 363:4	308:20
<b>improper</b> 621:7	<b>include</b> 328:2	406:8 523:5	309:18,22
624:1	399:14 412:2	<b>incremental</b>	332:20 337:22
<b>improved</b> 345:9	419:1,18 441:15	365:10,19	356:21 359:7
<b>improvement</b>	442:21 484:20	486:20	360:10 373:4
557:8,16	<b>included</b> 402:15	506:11,14	<b>indies</b> 311:5 313:2
<b>improving</b> 557:22	443:6 484:21	507:22	314:1 317:6
<b>imputed</b> 423:12	485:3 512:2	<b>indeed</b> 315:13	334:22
<b>inability</b> 610:5	521:13	400:9 493:2	337:10,17
<b>inaccurate</b> 416:18	534:11,14	498:4 573:6	338:12 339:17
<b>in-air</b> 532:9	623:20	<b>Independence</b>	343:12
<b>inappropriate</b>	<b>includes</b> 389:22	299:17	353:2,17,22
388:3 390:17	398:14 421:1	<b>independent</b>	355:3 356:4,21
393:16 447:4	626:3	307:15 337:16	358:11 366:9
497:9 518:6	<b>including</b> 306:1	338:22 339:9,21	367:20 368:8,12
522:15	317:16 399:9	341:8 370:12	372:16 373:11
<b>Inc</b> 512:2 571:17	463:12 579:18	371:11 429:22	374:10 382:16
<b>incentive</b> 315:17	<b>income</b> 463:18	430:7 460:10	471:15 473:9
317:1 325:20	<b>inconsistent</b> 312:9	471:11 476:19	<b>indirectly</b> 519:6
346:8 347:14	<b>incorporate</b> 548:9	543:2	<b>individual</b> 450:21
348:9,17	<b>incorporated</b>	<b>independently</b>	456:21
	528:19 620:19	488:11	457:6,13,22
	<b>incorrect</b> 310:13	<b>independents</b>	459:2 467:5
			468:3 469:18

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 29

472:8,10,22 480:3 592:21 <b>individually</b> 541:18 <b>induce</b> 442:4 <b>indulgence</b> 455:15 605:13 <b>industries</b> 497:15 <b>industry</b> 313:12,14 340:10 343:4 352:13 353:7,18 356:13 357:16,17 364:18 460:17 463:4,17 464:22 467:2 468:1 470:16 471:17 476:18 477:22 478:3 482:17 493:2,5 497:3 499:2 552:12,16 557:4,16 603:3,7,8,13 604:13 619:1 <b>industry's</b> 557:8 <b>inevitably</b> 532:16 <b>inferior</b> 580:6 <b>inflation</b> 490:17,19 <b>influenced</b> 427:5,7 445:9 <b>inform</b> 546:6 <b>information</b> 308:17 309:3,5 312:2 313:21 319:4,5,10,14,16 ,22 320:9 323:20 327:20,22 328:7 329:14 331:4,13	332:6,9,11 341:9 376:3 401:21 402:1 403:3 414:8 415:16 477:17,22 478:2 550:9 595:6 <b>informational</b> 319:19 325:6 326:16 327:5 331:11 332:2,4 471:7 498:13 <b>information- gathering</b> 321:7 <b>information- impacted</b> 340:5 <b>inherent</b> 606:14 <b>initial</b> 491:19 <b>initially</b> 306:7,19 <b>initiatives</b> 526:21 <b>innumerable</b> 519:13 <b>in-principle</b> 427:11 <b>input</b> 327:19 497:13,14,17 499:17 500:3 503:8,9 <b>inputs</b> 433:9 499:16 <b>insist</b> 420:4 <b>install</b> 437:5 <b>installation</b> 548:16 <b>installed</b> 436:18 442:11,12,14 <b>instance</b> 502:17 531:1 <b>instances</b> 574:9 624:13	<b>instead</b> 333:6 344:5 362:11 457:19 468:10 490:2 545:18 <b>instrument</b> 449:1 <b>integrated</b> 547:20 <b>integration</b> 523:5,20 <b>intend</b> 393:19 <b>intended</b> 442:8 524:3 566:19 <b>intensity</b> 550:10 <b>intensive</b> 548:16 <b>interact</b> 378:18 <b>interaction</b> 483:1 487:20 <b>interactive</b> 379:7 454:2 481:11 482:18 585:10 <b>interdependent</b> 430:1,3 <b>interest</b> 360:6 365:17 388:21 480:12 529:5 <b>interested</b> 314:7 359:6 370:16 388:5 499:5 527:1 595:7 626:19 628:13 <b>interesting</b> 547:3 <b>interests</b> 611:21 <b>interfaces</b> 523:8 542:9 <b>interior</b> 429:12 <b>internal</b> 603:22 <b>internally</b> 583:16 602:20 <b>Internet</b> 398:16	410:15 441:15 476:14 485:17 501:5,10,18 580:15 584:18 <b>interpret</b> 425:3 447:14 <b>interpretation</b> 393:14 407:4 617:1 <b>interpreted</b> 407:8 <b>interrupt</b> 388:10 461:5 585:14 <b>introduce</b> 377:14 <b>introduced</b> 331:22 537:22 <b>introducing</b> 507:13 <b>introduction</b> 450:22 <b>invest</b> 539:14 <b>invested</b> 539:15 <b>investigated</b> 387:7 <b>investigation</b> 480:2 <b>investment</b> 435:8,15,17 437:17 438:3 540:9 551:17 <b>investments</b> 491:19 540:1 <b>invisibility</b> 325:22 <b>involve</b> 342:13 548:15 <b>involved</b> 341:6 427:8 456:22 <b>involving</b> 458:1 533:6 <b>IP</b> 533:14
--	--	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 30

<b>iPad</b> 537:5 547:13	310:3,6,8	447:5,10 451:4	622:12,16 623:2
<b>ironic</b> 610:4	311:11,19,21	452:17,18	624:1,12,18
<b>irony</b> 574:1	313:6 315:21	453:2,6,7 461:7	625:3,8
<b>irrelevant</b> 396:15	316:5,20	464:21 465:13	<b>iTunes</b> 453:1
<b>isn't</b> 312:7 316:8	317:13,14 319:9	472:7,10 473:13	<b>I've</b> 314:14 322:12
327:14 341:1,11	321:20	476:1 479:5	335:21
343:14 353:7	323:16,17,18,21	493:6 495:5,18	338:19,22
359:2,13,19,20,2	325:11 326:21	497:12	376:1,2 377:22
2 371:6,7,18	330:16 331:16	499:13,17	381:16
379:12 398:15	333:16 335:3,6	500:17 501:22	395:20,21 396:6
404:15 417:7	336:7,8,13,14	503:7 507:7,17	402:15 403:22
426:9 442:15	339:4,14,16	515:8 516:8,12	415:6 427:17
444:8,9 450:20	340:4 341:3	518:21 521:9	475:18 476:1
451:10 468:1	344:1 345:17	523:12 525:7,15	497:8 509:13
486:15 487:21	346:14	530:1,22 533:18	542:16
497:12 499:9	347:8,9,20	534:19	557:11,15
504:4 506:5	349:20,21	536:15,18	606:16 615:9
507:17 520:14	350:18 351:2,3	537:3,11 538:17	621:5 624:3
525:13 564:10	354:11,13	539:6 540:20,21	
586:13	355:17,19 357:1	543:15 544:22	
<b>issue</b> 305:10	359:21 362:11	546:7 547:18	<hr/> J <hr/>
308:7,8,11,13,15	365:4,6,7,9,20	548:17,20 552:1	<b>James</b> 303:7
309:4 310:18	366:7 371:10	553:7,18 554:1	510:5,7,18
315:18 317:17	372:5,6 373:6	555:7,21 556:3,6	<b>January</b> 380:18
341:1 363:21	376:19	560:1 565:8,11	564:19 565:3
364:13 368:5	378:14,16	567:14,15 568:9	<b>Janusz</b> 490:2
371:9 389:7	379:7,22 380:7	570:20	<b>Japan</b> 604:12
423:6 494:21	381:3 383:5,6	572:18,19 575:1	<b>JARED</b> 301:5
498:11,12 504:1	384:3 387:13,14	579:10 580:6	<b>Jenner</b> 514:18
523:10	390:3,21	582:21	<b>Jersey</b> 380:4
524:20,21 531:4	391:1,11,14	585:15,19 586:3	<b>jfreedman@jenne</b>
554:10 573:13	392:16 395:15	587:5,20 589:6	<b>r.com</b> 301:13
606:15 613:22	396:15 397:12	590:16,17	<b>Jim</b> 581:7
626:9	401:6,7 403:10	596:11	<b>job</b> 316:5 511:14
<b>issued</b> 519:12	409:3 412:15,20	597:5,8,21	556:7
<b>issues</b> 573:16	413:4,5,9 414:13	598:22 599:10	<b>John</b> 620:22
<b>item</b> 504:6	416:17 423:6,12	601:14,20	<b>joined</b> 511:11
<b>items</b> 439:5,6	425:10,17	602:11 603:11	<b>jointly</b> 317:19
<b>It'll</b> 342:15	427:7,17 429:2	605:1,11	<b>journal</b> 516:3
<b>it's</b> 306:6 307:8	431:8 434:6	607:18,22	619:7
308:3,4	435:14,15,16	608:14,21 610:4	
	437:17 438:2,9	612:12,13,14	
	439:10,11,17	614:7,8,9	
	441:9 442:11,13	615:15,16	
	444:11 446:11	617:19,21 618:1	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 31

<b>Judge</b> 300:3,4 305:7,19 306:10,20,22 309:7 311:15 318:6,14,18 324:2,7 350:6 355:15 362:13 367:6 377:3,6,10,20 380:11,14 381:5 388:9,16 389:1,5 390:18,21 391:3,7 393:22 394:3 418:16,22 419:16 420:18 421:3,6,15,22 431:7 432:8,11,19,22 433:3 448:2 455:17,22 456:3,9 459:8,18 461:11 474:7,18 475:5,8,13 476:9 483:5,8,10,15,18 20,21 484:1,2,14,19 485:2,10,15,20 486:2,8,12,15,22 487:13,19 488:13,21 489:2,13 490:3,7 491:5,10 492:4,7,9,18 494:7 495:2 496:12,18,22 497:5,21 498:6 499:9 500:2,7,18 501:1,12 502:1,5,15 503:2,9,12,15,21 505:5,17,21 506:16,22 507:16 508:2,7,13,15,16 20 509:2,8	510:2 514:13,20 515:15 516:22 517:15,21 518:7,9,16 519:2,9,14,19 520:6,7 521:4,6 524:6,9,14,15 525:12,21 526:4 527:9,12 531:12,17,20 538:9 552:15 554:11 556:9,11,17,19 568:19,22 569:11,15,17 572:8,20 575:3,6 581:15,21 582:7 583:4,11 584:1,11,14 590:18 591:2,6,19 592:3,7 595:3,9,17 597:19 598:3,6 605:6,9,15 609:7 610:13 612:10,16 615:17 616:2,6,7,10 618:8,12,14,15,2 0 619:5,14,17 620:4 621:2 624:5 625:14,18,21 626:8,13,19 627:2,5,11  <b>judges</b> 299:1 323:17,22 324:20 325:10 456:17 467:4,15 469:16 516:7 521:5 536:11 538:5 558:21 575:5	<b>July</b> 453:16 <b>jump</b> 542:15 <b>jumped</b> 608:10 <b>June</b> 299:12 558:7 627:15 <b>justification</b> 422:6  <hr/> <b>K</b> <hr/> <b>Karmazin</b> 511:13 613:9,15 <b>key</b> 526:22 538:15 558:16 <b>kinds</b> 334:1 373:10 512:18 517:7,8 531:2 542:3 <b>knowledge</b> 314:17 328:1,18,20 337:13,17,21 339:2 456:19 457:4 471:9 602:22 609:21 <b>knowledgeable</b> 527:20 <b>known</b> 336:10 348:1 483:22 <b>K-tel</b> 375:12  <hr/> <b>L</b> <hr/> <b>label</b> 337:16 339:9,21 341:12,16,19 343:15,16,18 345:19 347:12 349:3,5,15 355:11,19 358:18 362:7 363:7 376:10,13 466:18 468:19 469:1 471:11	472:8,22 478:6,15 <b>labels</b> 307:15,18 308:20 309:18 310:1,10 315:4,8 319:6,8,15 326:9 332:20 337:15 338:22 341:14,15 342:1,4 343:22 345:11 347:18 348:5,13 349:8,22 350:2,10,12,20,2 2 352:4,5,11 358:12 364:16 366:9 370:12 371:11 372:12 375:5 382:10 459:2 460:10 467:5 476:19 480:18 <b>label's</b> 507:2 <b>lack</b> 324:15 523:17 <b>lacking</b> 324:19 <b>lacks</b> 322:9,10 323:14 <b>Lady</b> 343:17 367:4,9 451:18 452:9 453:12,18 <b>lamented</b> 389:12 <b>landscape</b> 533:13 <b>language</b> 486:13 612:7 <b>large</b> 329:3 356:20,21 357:18 358:10 364:1 470:17 495:7 517:7 531:6 541:14 <b>larger</b> 350:1,11
---	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 32

352:5 363:22 364:17 393:2 <b>largest</b> 533:9 <b>Larson</b> 300:8 305:14,16,20 306:12,21 509:19 <b>last</b> 308:22 312:3,22 316:6 322:1 326:22 380:18 383:13 393:18 404:9 415:9 455:3,20 489:7 513:20 519:12 522:15 531:13 533:5 536:14 538:13 543:15 562:9,19 566:21 567:11 582:2 603:4,14 608:2 614:14 620:10 623:2,7 626:13 <b>Last.fm</b> 382:21 383:3,8,16 384:2,7,11 392:20 400:10,14,16 404:9 407:13 408:5 493:22 504:16 505:1 507:6 534:19 <b>late</b> 523:15 532:7 565:6 601:16 <b>later</b> 391:18 414:14 550:13 596:2 <b>latest</b> 452:13 <b>latter</b> 557:18 <b>Laughter</b> 361:8 459:20	<b>launch</b> 533:2 539:16 606:4,6,8 613:22 <b>launched</b> 532:7 555:11 614:21 <b>launches</b> 606:11 <b>launching</b> 605:21 <b>law</b> 321:3 621:1 <b>lawyer</b> 470:14 <b>lawyers</b> 459:15 514:18 <b>lead</b> 463:5,16 490:20 548:8,21 607:3 <b>leader</b> 411:13 <b>lead-in</b> 444:17 <b>leading</b> 352:21 <b>leads</b> 326:3 463:6 464:21 <b>lean-back</b> 585:5,17 <b>learn</b> 326:12 332:9,10 544:2 <b>least</b> 309:4 311:6 314:20 329:18,22 350:21 360:11 383:5 384:3 392:11 427:21 451:3 464:20 489:21 522:8 567:15 572:5 <b>leave</b> 364:13 561:10 562:17 568:11 578:14 <b>leaving</b> 372:15 421:15 467:18 <b>lecturn</b> 305:11	<b>led</b> 464:22 <b>legacy</b> 529:13,14 <b>legal</b> 387:12,13 423:15 510:1 <b>legislation</b> 320:22 321:10 331:14 <b>legislative</b> 388:13 389:2 <b>legitimacy</b> 322:9,11,13 323:14 324:16,19 <b>legitimate</b> 332:16 396:5 <b>length</b> 392:3 <b>lengthy</b> 465:11 <b>less</b> 311:5,12,14 349:11 351:4 354:9,10,16,17 356:5,8 362:18 366:21 367:10 389:2 395:16 412:3 416:9 419:14 420:13,15 445:11,17 446:4,11,16 447:2,8,12,18 486:16 501:20,22 506:12 540:21 <b>lets</b> 537:10 <b>let's</b> 339:11 346:22 360:17 364:13 367:4 378:17 384:21 403:16 404:7 407:10 414:11 443:18,19 444:18 467:19 478:14 496:3	507:1 537:7 577:3 604:18 <b>letting</b> 463:15 <b>level</b> 557:19 <b>levels</b> 417:2 425:14 <b>LEVIN</b> 301:6 <b>libraries</b> 350:16 368:8 <b>library</b> 299:16 350:15 362:7 <b>license</b> 307:10,19 309:19 311:4 313:1 314:22 316:11,16 334:12,15,16 336:4,11,17 337:11 348:11 360:20 375:19 400:5 406:21 407:3,7 467:6 471:8,16 472:13 473:6,8 476:2,5 477:7 478:7,16 480:5,8,14,15 485:12 500:15 506:18 <b>licensee</b> 360:18 <b>licensees</b> 504:21 <b>licenses</b> 307:14 310:20 312:17 313:13 315:17 324:12 332:21,22 333:11 334:6 338:11 341:11,14 348:4 350:1,2,10,12 354:2,11 355:4 356:5 364:16 368:12 369:12
--	--	---	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 33

374:11 376:4 382:17 384:4,9,15 385:4,6 403:15 460:4,10 462:15 463:13 464:1,7 466:8 469:22 475:19,21 479:11 480:19 481:4,7 492:12 504:20 506:13 507:22 <b>licensing</b> 318:7 458:13,22 463:4 477:19 480:11 503:16 506:4 <b>licensors</b> 308:1 334:11 473:17 <b>life</b> 532:15 606:16 <b>light</b> 537:1 <b>likelihood</b> 487:20 <b>likely</b> 340:3 364:5 445:21 446:7,11 451:12 463:5 469:3 507:17 603:21 604:21 605:1 <b>likewise</b> 402:18 430:18 495:13 <b>limit</b> 567:2 <b>limitations</b> 583:19 <b>limited</b> 321:21 487:11 532:14 555:7 573:16,17,18 <b>line</b> 353:15 417:1 419:13 434:13 440:4 445:3 465:9,14,17 472:20 503:7,8 507:18 566:21	584:16 613:1 <b>lion</b> 562:16 <b>list</b> 370:5 373:1 376:21 378:10,12,13,14, 17,19,20 379:6,7 534:20 604:4 624:5 <b>listed</b> 379:2 <b>listen</b> 331:10 339:22 454:7 556:5 561:18 591:17 617:7,9,12 <b>listened</b> 340:11 <b>listener</b> 586:7 <b>listeners</b> 535:6 555:18 570:11,17,18 577:22 <b>listening</b> 340:14 389:16 398:6 442:20 445:22 446:17 486:3,4 535:14,22 556:4 592:22 <b>listens</b> 365:11 <b>Listmania</b> 376:20 <b>lists</b> 374:7,8 376:21 413:18 <b>literally</b> 457:17 <b>literature</b> 398:21 488:1 <b>litigating</b> 574:2 <b>little</b> 350:7 357:2 358:9 359:2,8 363:7 372:5 381:18 419:20 427:18 431:8	436:13 445:11,21 446:4 447:2,3,7,8 451:7,8 453:19 468:18 482:17 486:12 491:14 492:11 495:20 497:22 500:20 511:18 523:14 540:21 542:10 544:16 550:17,22 557:12 574:7 583:5,9,11 584:8 593:15 <b>live</b> 412:21 620:11 <b>Live365</b> 403:2 411:19,20 412:6,21 413:2,5,8 <b>lives</b> 523:7 <b>living</b> 566:1 <b>LLP</b> 300:12 302:5,13 <b>local</b> 587:10 <b>location</b> 530:16,18 <b>lock</b> 317:4 <b>logic</b> 491:1 <b>long</b> 427:18 441:2 461:7 462:8 502:22 503:9 511:1,10 521:1 534:19 547:7 548:8 563:10 571:15 602:19 604:4 606:17 614:13 621:8 627:9 <b>longer</b> 308:3 381:18 489:7 530:11 553:5	560:15 563:14 565:14,20 584:12,13 605:9 <b>long-range</b> 596:17 <b>lose</b> 364:5 459:15 545:12 560:10 561:22 586:20 599:9,17 601:22 <b>losing</b> 560:16 <b>lost</b> 599:15 <b>lot</b> 310:6 315:3 316:10 322:6 330:5,10 343:12 355:5 362:2,9 364:5,10 425:22 445:10,11,21 446:4,7,11 447:2,3,8 532:2 535:22 538:14 552:20 553:19 560:18 561:1 562:4,5 564:1 573:1 583:21 <b>lots</b> 340:6 341:4 385:7 422:12 453:4 471:19 473:18 477:21 497:15 531:1 559:21 579:15 614:1 <b>loud</b> 598:22 <b>love</b> 454:5 562:13 <b>low</b> 355:13 362:1 363:1 495:15 500:1 543:14 553:10 <b>lower</b> 313:6 363:11,18 403:10 406:4 408:2 418:10 419:10 422:7
---	---	---	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 34

437:11 463:5 467:11 495:11 499:22 504:6 506:6 <b>lowered</b> 417:5 <b>LRS</b> 596:11,12,14 597:3 <b>LRSs</b> 596:20 <b>LTE</b> 534:5 <b>Lubinsky</b> 375:15 <b>luncheon</b> 431:12 <b>luxury</b> 612:20	343:12 348:6 358:11 364:11 366:9 375:7 382:3,9,12 463:12 480:13 <b>maker</b> 545:20 <b>management</b> 583:16 <b>Manges</b> 300:12 620:7 <b>Manhattan</b> 529:19,21 <b>manufacturer</b> 442:6 <b>manufacturers</b> 434:22 438:18 495:6,11,14 548:9 614:13 <b>March</b> 324:5 <b>mark</b> 322:15 377:2 414:12,15 443:20 460:22 471:21 473:21 <b>marked</b> 303:11 304:1 322:19 323:1 377:18 378:1 414:18 444:1,5 450:14 461:14 472:4,6 474:3 475:3 476:12 513:5,8 515:3 571:10,13 580:22 581:3 589:4,10 596:5,9 597:2 608:6,13 <b>market</b> 315:13,16 316:2,12,13 333:2,20 355:13 356:6,22 357:3 358:13 367:15 383:2 385:13	387:16,17,18 399:12 400:1,7 411:13 412:1 435:1 436:4,21 468:16,20 469:7,10 493:11 494:12,14,16,19, 20 495:8 496:16,19 497:2,10,16,17 499:1,4,14,15,17 ,18 500:1,13 <b>market-</b> <b>determined</b> 388:2,3 <b>marketing</b> 341:5,7 436:15 441:4,8,13,22 443:1,2,3 525:1 526:21 <b>marketplace</b> 319:17 462:16 464:14 <b>MARTIN</b> 302:12 <b>Masiello</b> 620:22 <b>match</b> 351:3 362:4 371:20 <b>matched</b> 370:7 <b>material</b> 305:22 306:2,5,13,14,15 ,18 314:14 509:4 607:6,19,22 614:6 615:7,14 <b>materials</b> 314:17 338:9 458:8 <b>math</b> 532:19 <b>matter</b> 299:5,15 305:17 360:15 364:8 387:12,13 423:2 438:2 467:20 479:5	518:8 533:17 619:21 620:14 <b>MATTHEW</b> 302:4 <b>may</b> 318:16 336:4 345:11 355:6,10,19 366:19 391:5 422:9 432:10,11 453:15 456:9 462:16 474:10,17 483:19 485:11,12 489:20 508:20 509:10 520:10 535:5 541:1 556:18 558:2 566:9 571:17 573:18 590:1 612:16 615:21 616:6 619:21 621:22 624:15 <b>maybe</b> 337:22 384:5 429:20,21 449:10 484:16 541:2 550:12 <b>mdesanctis@jenn</b> <b>er.com</b> 301:12 <b>mean</b> 311:8 338:19 343:18 348:6 352:8 353:7 357:4 358:8,22 359:19 362:3 366:6 391:9 392:15 417:12 418:14 420:1 423:21 427:4 430:7 438:10 439:14 447:9,15 449:19,21 452:17 454:11
<hr/> M <hr/>			
<b>Machine</b> 619:9 <b>Madison</b> 299:16 <b>magazine</b> 517:3 <b>magic</b> 377:20 519:10 <b>magnitude</b> 563:13 <b>main</b> 365:17 416:8 526:9,12 <b>mainly</b> 364:11 498:21 536:2 <b>maintained</b> 530:5 <b>maintaining</b> 530:9 <b>major</b> 310:10 328:10 350:17 357:1 362:19 383:3 479:10,19 480:3 484:6 604:1 <b>majority</b> 309:18 528:7 553:18 562:16 574:9 <b>majors</b> 310:17,20 311:3 314:1 315:6 317:16			

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 35

470:3 475:22 481:21 494:3 496:14 512:16 519:10 532:13 534:16 536:12 539:13 541:11 549:20 552:18 578:18 585:12 587:1,13 604:8 606:15 612:14 614:20 <b>meaning</b> 343:20 407:8 412:15 447:4 456:21 457:21 529:17 530:15 533:15 545:9 547:11 555:7 559:15 560:13 567:1,7 615:11 <b>meaningful</b> 447:11 463:13 587:16 <b>means</b> 347:6 353:11 446:9,22 447:2,3 449:21 466:17 493:10,17 532:14 548:1,4 560:5,6 619:10 622:20 <b>meant</b> 407:5 440:16 450:3 <b>measured</b> 354:22 <b>mechanics</b> 595:15 <b>mechanism</b> 348:17 482:15 <b>media</b> 512:5 584:4 <b>meet</b> 386:19 514:20 <b>meeting</b> 583:16	<b>Mel</b> 511:13 613:9 <b>members</b> 460:16 465:1 477:5,8 <b>memorize</b> 384:19 <b>memorized</b> 406:15,16 484:17 <b>memory</b> 310:2 384:14,16 385:3 412:20 450:11 475:22 625:7 626:4,15 <b>mend</b> 552:13 557:5 <b>mention</b> 374:20 449:13 450:5 475:10 491:16 553:2 625:22 <b>mentioned</b> 374:16 402:17 418:20 419:17 449:11 624:4 <b>mentions</b> 449:8 <b>merge</b> 400:3 <b>merged</b> 319:13 511:13 <b>merger</b> 511:4,5 566:11,17 593:18,19 594:3,4 <b>met</b> 509:20 <b>method</b> 436:8,9 <b>metrics</b> 597:6 <b>Meyer</b> 303:7 510:5,7,14,18 513:16 515:19 517:15 521:13 523:22 526:8 531:12 552:17	557:4 568:19 570:4 571:5,15 575:13 578:11 581:4,7 583:3,7 584:17 589:3,13 595:5 596:9 598:11 608:18 610:17 613:4 618:15 <b>Meyer's</b> 522:19 620:20 <b>MFN</b> 475:18,20 <b>Michael</b> 301:4 403:11 514:17 <b>Michael's</b> 405:14 <b>microphone</b> 350:7 <b>Microsoft</b> 536:17 <b>middle</b> 405:4 465:17 482:4,20 566:10 <b>midway</b> 376:14 <b>mile</b> 482:6,12 <b>million</b> 452:16 527:7 528:12 533:4,22 535:6,21 555:17,21 558:5 570:17,18 571:1 575:17,18 577:1 602:21 607:3 <b>millions</b> 551:9 <b>mind</b> 308:12 323:14 370:6 459:12 533:12 534:15 583:21 <b>mine</b> 444:8 <b>minimal</b> 401:22 <b>minimum</b> 401:9 <b>minus</b> 308:2	427:15 <b>minuses</b> 480:6 <b>minute</b> 433:17 443:19 582:19 609:12 <b>minutes</b> 377:7 459:7 462:20 509:5 528:4 605:14 <b>Miranda</b> 300:9 509:18 <b>miranda.schiller</b> <b>@weil.com</b> 300:18 <b>mis</b> 473:1 <b>mischaracterize</b> 487:7 <b>miscorrected</b> 520:4 <b>misleading</b> 311:21 <b>missed</b> 474:17 582:18 <b>missing</b> 556:22 <b>misspoken</b> 391:6 474:10 <b>misstatement</b> 473:2 <b>mistake</b> 417:9,13 <b>mistaken</b> 462:3 <b>misunderstanding</b> 309:11 <b>mix</b> 351:11 371:10,12 <b>mlb.com</b> 587:14 <b>mobile</b> 411:10 578:20 <b>mode</b> 411:1 558:1
---	---	---	--



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 36

<b>model</b> 559:2 577:5	543:16,18	<b>MRF</b> 566:22	8 488:15 529:4
<b>models</b> 535:1	560:11,17 563:3	<b>MRI</b> 338:21	535:17 541:21
<b>modem</b> 546:17	565:9,10 567:19	339:9,12 347:16	542:3
547:6,16	568:8	348:4 472:11	566:5,15,19
<b>modems</b> 512:17	<b>monthly</b> 408:22	<b>multipage</b> 581:5	567:1,16 580:8
545:17 547:2	409:1 527:7	589:5 608:9,14	587:10,12
<b>modest</b> 527:22	535:18 565:15	<b>multiphase</b> 545:6	594:13 599:3,6
<b>MOG</b> 518:18	569:1	<b>multiple</b> 391:15	600:14
534:16	<b>months</b> 452:12	396:13 398:17	<b>musical</b> 372:9,10
<b>moment</b> 368:16,17	520:21 538:13	412:7 488:9	594:16
380:10 389:6	559:10 565:19	<b>multiplied</b> 359:15	<b>musicians</b> 345:18
410:4 455:16	569:8,9 590:1	395:21	<b>music-only</b> 410:13
456:4 463:1	<b>morning</b> 305:7,15	<b>Multiply</b> 395:13	414:7 433:7
570:10 575:4	307:6,7 377:7,10	<b>music</b> 302:2	535:10
577:16 593:3	616:1 626:12	333:12,21	<b>Musicoverly</b>
610:7	<b>mostly</b> 548:17	352:13	413:22
<b>momentarily</b>	<b>motion</b> 305:21	355:12,17	<b>musicreports.com</b>
596:8	306:1,19	362:12 365:9,12	472:11
<b>money</b> 349:4,12,17	<b>motivated</b> 348:14	370:13,14,21	<b>must've</b> 407:4
356:16 357:7	<b>motive</b> 314:3	371:14,16,18	<b>myself</b> 368:4
359:2 375:14	<b>Motorola</b> 540:4	372:11,13	369:18 393:19
435:12 438:5,8	<b>mountains</b> 551:12	373:10,12,13,20	418:17 520:4
455:2 562:5	<b>mouth</b> 460:16	379:3 395:18	
<b>monopolist</b> 497:10	<b>move</b> 475:5 494:5	397:4 408:18	N
498:5	504:20	409:20 413:12	<b>namely</b> 334:1
<b>monopoly</b>	530:16,18 544:4	416:11,15 417:2	515:22
497:4,15	555:19 583:2	420:16,22	<b>NARM</b> 448:15
<b>monopsonist</b>	598:1 611:16	422:21	449:1
499:20	612:9	423:3,8,22	<b>narrow</b> 365:13
<b>monopsony</b>	<b>moved</b> 554:2	424:5,15	<b>nation</b> 318:8
496:15 497:19	582:5 620:17	425:8,14	475:11
500:11 501:3	<b>moves</b> 530:17	426:10,13,18	<b>national</b> 530:1
<b>Monster</b> 454:6	<b>movie</b> 379:3	427:4,8,9,15	<b>nationwide</b> 551:6
<b>month</b> 395:6,14,22	<b>movies</b> 452:20	428:17,21	<b>naturally</b> 573:18
401:5,17,20	453:5 547:15	430:19	<b>nature</b> 315:19
402:4,9 403:18	<b>moving</b> 380:11	445:4,15,20,22	323:19 342:12
407:19 412:6	523:2 533:18	446:7,16 447:20	387:22 399:19
413:20 414:4	536:4 546:2	448:6,19 450:6	400:7,8 460:1
416:9 418:4		452:18 453:5	481:4 482:21
424:15		477:2 481:17	
		486:3,18	
		487:2,10,11,12,1	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 37

528:5 <b>nearby</b> 496:2 <b>nearest</b> 400:4 482:7 499:2 <b>nearly</b> 465:21 <b>necessarily</b> 315:21 505:9 507:16 563:22 586:20 <b>necessary</b> 433:10 437:6 <b>negative</b> 352:2 460:12 503:8 <b>negatives</b> 450:2 <b>negotiate</b> 311:1 314:22 324:12 387:21 467:6,11 <b>negotiated</b> 307:14 328:10 333:1 335:22 387:6,18 456:20 462:15 503:19 <b>negotiating</b> 336:22 339:12,22 <b>negotiation</b> 311:2 333:8 334:6,17 348:2 360:12 466:8 504:5 <b>negotiations</b> 314:4,12,13,15,1 8 333:6 334:7 335:20 338:11,17 347:16 359:9 463:13 466:1 <b>neighbor</b> 482:7 <b>neighbors</b> 482:8,9 498:20 499:2 <b>neither</b> 367:1 417:12 447:1	628:8 <b>net</b> 311:9 446:16 601:5,17 <b>network</b> 438:16 530:1 539:15 540:9 605:22 <b>networks</b> 439:22 526:17,18 530:5,9 531:11 534:2,7 540:3 551:19 580:5,7 <b>Nevertheless</b> 316:10 <b>newest</b> 452:9 <b>news</b> 448:19 529:5 536:6,8 587:10 <b>newspaper</b> 515:4 520:15 <b>newyorktimes.co</b> <b>m</b> 515:5 <b>nice</b> 351:20 514:20 <b>niche</b> 358:9 370:21 <b>night</b> 543:3,4 <b>Ninety-one</b> 490:7 <b>nitties</b> 428:4 <b>nobody</b> 337:14 <b>Noll</b> 303:3 305:3 307:6,8 308:9 309:17 318:6 322:22 326:11 331:10 349:22 355:15 357:9 377:1,22 388:11 389:9,17,22 390:19 391:8,17 392:7,22 393:9,20 394:7 414:21 418:17 432:4,17 433:5	436:12 443:8 444:4 450:17 455:4,9,19 456:15 461:20 465:16 475:8 484:3 508:22 <b>Noll's</b> 305:17 306:2 322:16 389:10 <b>none</b> 310:19 337:10,17 375:19 382:15 508:17 541:9 <b>nonetheless</b> 388:4 <b>nonexistent</b> 431:5 <b>noninteractive</b> 397:14 412:9,11,13 477:2 585:5,17 <b>nonmusic</b> 486:4 <b>nonprecedential</b> 331:15,16 389:13,14 390:10 392:2 <b>noon</b> 431:8 <b>nor</b> 367:1 447:1 531:9 628:9,13 <b>normally</b> 342:11 353:6 489:7 <b>North</b> 512:22 529:12 <b>Northwest</b> 301:7 302:14 <b>Notary</b> 299:19 628:18 <b>note</b> 440:10,11,12 441:5 515:18 520:18 557:9 <b>notes</b> 440:14	441:18 <b>nothing</b> 423:7,9 438:9 475:18 537:6 546:15 <b>notice</b> 323:16 475:9 494:22 502:11 <b>noticed</b> 403:6 <b>notification</b> 546:1 <b>notify</b> 565:21 <b>notifying</b> 565:6 <b>notwithstanding</b> 602:19 <b>November</b> 311:9 369:22 381:11 382:18 515:5 565:7 573:7 620:3,10 <b>now's</b> 617:2 <b>NPD</b> 443:14 444:6 448:15 <b>numerous</b> 621:20 <hr/> <b>O</b> <hr/> <b>object</b> 458:16 474:8 514:8 515:14 572:5 609:17 621:3 <b>objecting</b> 610:5 621:5 <b>objection</b> 467:16 474:7 483:6,7,9 514:22 515:16 517:17 521:11,18 526:4 573:3 575:9 582:6 591:1 598:4,5 605:4 611:18 615:15
---	--	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 38

<b>objections</b> 624:6	506:6 514:6	349:7 350:18	572:2 575:11,20
<b>objective</b> 494:4	541:9 568:1	352:7,16 353:22	576:6,21 578:11
604:22 618:2	569:6 572:4	354:19	580:4,17 581:11
<b>objects</b> 623:15	582:4 609:10	361:7,13,14,22	582:21 584:1,14
<b>obligation</b> 345:12	<b>offered</b> 309:19	367:5 368:22	585:15 586:1
<b>observation</b>	310:11 311:5,16	369:3,10 370:2	587:6,22
495:10	313:2 315:12	371:1 372:15	593:2,11
<b>obtain</b> 329:13	390:13 426:10	373:2,22 374:3	594:5,7,10
440:3	430:15 451:14	375:9	595:2,9,16 597:1
<b>obtained</b> 506:19	497:6 524:5	378:8,11,20	598:19 599:20
<b>obvious</b> 371:9	543:17 552:20	381:5,17 382:14	600:8,11,14,20
<b>obviously</b> 314:7	621:15 622:9	384:1,5,21	601:3,12,20
338:6 341:3	<b>offering</b> 455:10	385:12 386:20	602:13,17
346:14 351:2	499:10	387:9 388:20	603:11,16 605:7
381:2 383:12	518:8,10,11	391:7 394:21	606:3 607:4,11
417:17 419:7	519:2 540:7	397:21 399:7	609:1,4
429:13 470:12	590:19 609:8	403:1 404:5,18	610:15,20
515:6 516:2	623:20,21	405:1,6 406:18	611:1,14
529:3 543:10	<b>offerings</b> 554:9	409:18 410:3,5,6	614:14,15
553:21	<b>offers</b> 316:15	411:18 414:3	615:12 616:6
<b>occur</b> 439:4	372:18 396:20	417:4,8 419:16	617:13
<b>occurred</b> 533:6	397:17 465:22	422:2 425:5,12	<b>old</b> 375:6,16 488:1
536:13	501:9 507:3	426:16	622:18 624:8
<b>October</b> 452:14	535:16	428:11,14	626:12
565:5	<b>official</b> 610:2,10	433:13,22	<b>older</b> 403:12 584:8
<b>O'Donnell</b>	612:1	434:3,12 435:10	<b>omission</b> 553:8
584:10,11	<b>off-site</b> 583:16	436:3,20 437:3	<b>on-air</b> 584:3
<b>OEM</b> 433:16	<b>Oh</b> 355:5 375:11	438:4 439:11	<b>on-demand</b> 448:13
434:5 439:9	376:9 379:4	440:15	451:13
441:19 527:2	391:1,17 406:21	443:8,13,21	452:3,7,12,15
581:19	436:14 440:15	445:3 449:13	454:13,14
<b>OEMs</b> 434:18	452:5 455:5	467:18 469:12	<b>ones</b> 317:8 319:18
441:12,21 442:5	514:15 625:17	486:14 487:18	364:10,11
443:3 523:8	<b>okay</b> 310:6	492:8 496:13	375:10 439:9
<b>offer</b> 307:19	312:14,20 315:7	506:3 508:13	446:19 447:22
351:10 371:4	318:5 320:16	510:2 531:17	476:6 536:19
387:21 396:12	321:22 324:1,21	535:20 537:8	574:4 624:3
474:5 480:15	326:2,11 329:1	539:9,17 545:22	<b>one-to-many</b>
483:3 501:4,6	330:9,19 334:11	549:10 551:13	541:16
	337:7 339:3,11	552:2 556:9,15	<b>OnStar</b> 546:10
	341:17 342:21	560:9 561:21	<b>onto</b> 454:6
	343:21 344:3,21	568:10	
		569:11,15	
		570:22 571:4,21	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 39

<b>open</b> 392:6 393:7	588:14	344:8,15 365:21	498:18
<b>opening</b> 392:18 623:4 625:11	<b>opt</b> 476:8 548:5	520:4 601:9 628:13	<b>overwhelming</b> 533:17,18 561:8
<b>operate</b> 538:21 539:16	<b>optimal</b> 319:7	<b>ought</b> 442:19	<b>owe</b> 346:4 347:2,8
<b>operates</b> 527:18 532:9 605:22	<b>optimistic</b> 557:21 558:12	<b>outcome</b> 319:22 335:1,5,7,18 336:9,19 340:3,7,19	<b>owed</b> 342:9
<b>operating</b> 348:9 356:12 357:19,20 363:7 470:19,21	<b>oral</b> 515:22 574:13 603:18 605:20	462:17 469:11 628:13	<b>owing</b> 325:21
<b>operation</b> 526:10	<b>orbit</b> 532:8	<b>outcomes</b> 319:22 322:6 323:21 336:15 337:5	<b>owned</b> 343:12,15,17,22 353:3,20 368:12 374:10,16 376:11
<b>operations</b> 510:22 511:12,14 527:5 531:2	<b>order</b> 305:22 339:20 390:12 408:7 420:16 435:8,20 437:18 463:21 467:12 488:11 499:19 507:15 563:13 594:4,5 595:11,14,15 625:13	<b>outlier</b> 392:21	<b>owns</b> 343:18 345:19 375:2 376:7 605:22
<b>opinion</b> 307:8,13 318:20 324:10,14 349:21 350:9 358:7 386:20 455:10 480:9 550:4 553:22 554:17 593:1	<b>ordinary</b> 441:14 571:4	<b>outside</b> 324:19 326:4 573:4 579:16,17	<hr/> <b>P</b> <hr/>
<b>opinions</b> 350:19 369:17,18	<b>organization</b> 476:19 596:13	<b>overall</b> 359:15 399:1 417:2 445:4,15,20 446:20 447:13 451:9	<b>p.m</b> 432:2 509:7 627:13
<b>opportunity</b> 316:15,22 329:4,6,8,13 330:20 333:4 504:7 617:3 624:17	<b>orient</b> 357:2	<b>overburdensome</b> 625:9	<b>package</b> 587:17
<b>opposed</b> 326:6 340:15 344:13 345:7 353:9 376:5 415:20 417:10 486:3 560:7 587:17	<b>original</b> 305:21 308:21 312:6,18 330:18 375:8 436:15,16	<b>overcome</b> 438:15	<b>packaging</b> 587:18
<b>opposing</b> 308:18 309:6	<b>originally</b> 453:21	<b>overhang</b> 481:5,12	<b>page</b> 306:4,7,9,12,15 323:2,11,16 357:10,12,13,15 369:4,8 376:6,15 378:7 381:8,19,20 394:8 397:19 398:4,5 404:8,12,13 405:2,4,5 416:1 418:20 440:14 443:12 444:19,21 448:12 451:11 465:5,6,9,14,16 484:5 485:15 490:3 492:10 513:20 522:19 575:14 576:7 577:3 584:2
<b>Oprah</b> 584:8	<b>originals</b> 375:2,10	<b>overlap</b> 482:12	
	<b>others</b> 310:13 314:8 339:1 351:22 368:5 375:11 401:10 402:5 411:12 460:17 471:16 473:17,20 474:17 489:12,20 492:21 557:17	<b>overnight</b> 542:15	
	<b>otherwise</b>	<b>overruled</b> 459:9 521:11 526:5	
		<b>overstatement</b> 392:16	
		<b>over-the-air</b> 365:12,18 370:22 371:19	
		<b>overwhelmed</b>	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 40

589:5 590:16 591:9,22 593:6,7 597:12 598:12,16 608:15 609:5 613:5,14 616:21 618:16 622:14 <b>pages</b> 299:14 306:18 368:13 369:2 371:4 373:3 415:9 462:22 479:14 486:8 488:21 491:6 501:2 576:7 577:21 617:8 <b>paginated</b> 609:5 <b>paid</b> 343:6 344:12 345:19 361:12 364:8 395:9 399:4 400:16 411:10 528:8 560:8 566:16 579:20,22 580:2 <b>paint</b> 524:1 <b>Pandora</b> 367:1 390:1 391:10,19 392:9 393:20 394:10,14 395:3,4,12 396:9,19 397:9,17 398:1,5,8 399:9,10,13,16 411:2,4,8,11,13, 16 412:3 413:1,3 485:17 494:1 504:16 534:16 535:1,4,10 536:1 537:8 538:22 541:18 543:11 547:19 555:11,17,20	570:11,22 572:11 575:18 576:22 577:9,13 578:14,15,19 579:22 580:5 584:20 585:4,7,8,10 587:4,12,13,20 588:19,22 589:7 590:4,9 591:13 592:2,19,22 593:4,9 616:17 617:9,12 <b>Pandoras</b> 498:21 <b>Pandora's</b> 392:5 572:10 586:9 <b>Panel</b> 388:18 <b>paper</b> 320:14 325:19 534:3 <b>papers</b> 326:12 <b>Paradise</b> 374:21 <b>paragraph</b> 376:15 398:11 462:5 463:2 465:18 476:16 515:18 549:6,11,14 552:11 556:12,14 557:3 558:13 564:16 618:17 <b>paragraphs</b> 477:5 <b>parallel</b> 501:16 <b>pardon</b> 465:5 480:14 <b>parentheses</b> 618:20 <b>parlance</b> 457:10 <b>Parsons</b> 621:1 <b>participate</b> 314:11,13 380:6	610:17,20 <b>participated</b> 337:11 609:1 610:12 611:12 <b>participates</b> 337:15 <b>particular</b> 315:5 351:13,14 355:10 365:8 366:16 374:13 444:22 466:18 470:2 492:13 504:3 621:17 622:13,14 <b>particularly</b> 447:20 448:6 501:13 533:14 574:22 <b>parties</b> 310:15 331:19,21 333:3 334:21 335:17 387:18 391:13 457:19 533:6 621:17 622:21 625:9 628:10,12 <b>partly</b> 325:17 412:18 <b>partner</b> 509:17 <b>partners</b> 439:13 <b>party</b> 320:8 390:12 391:14 476:7 624:20 <b>pass</b> 478:19 <b>passed</b> 503:10 594:16 <b>passenger</b> 546:9 <b>passes</b> 609:20 <b>past</b> 312:1 462:13 517:9 533:10 621:16 624:19	626:2 <b>path</b> 546:3 <b>pathways</b> 453:11 <b>patience</b> 521:7 <b>PAUL</b> 302:3 <b>pause</b> 433:2 455:18 536:10 582:20 609:13 <b>pausing</b> 389:6 <b>pay</b> 341:11,14,18 342:4 343:5 344:22 346:10 347:17 348:15 385:8 390:2 395:15 396:9,13 397:3,4 399:20 404:9 416:9,10 417:14,16 419:14 420:5,8 423:9,16,18 425:11 428:7,16 437:4 440:2 478:2 486:17 487:2,9,12 505:4 529:7 546:17 559:14 561:11,14,15,18, 20 562:18 563:2,3 567:15,21 568:6,13,16 578:20 579:2,5 619:13 <b>paying</b> 344:4 345:22 417:15,16 418:4,6,8 419:6,7 420:13 422:9,17,20,21 424:4,11 425:1,2,6,9 436:5 559:17
--	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 41

560:6 564:5,6 567:18,19 571:2 575:17 579:11 <b>payment</b> 408:22 409:1 417:7 420:9 435:17 436:2 438:1,18 <b>payments</b> 342:12 441:20 442:3,4,8 443:3 490:21 <b>pays</b> 348:22 394:15 507:6 618:21 <b>PC-based</b> 441:14 <b>Pelcovitz</b> 402:11 403:17 405:21 406:5,7 409:6 <b>penetration</b> 413:16 574:14 <b>people</b> 314:3 315:21 326:1,5 338:21 340:6 346:10 353:12 364:9 365:17 378:17 380:6 387:5,6,21 398:22 417:13 418:2 420:3,14 422:8,16,17,20 423:1,13 424:3,10 425:6 428:14,19 435:2 446:6,10,18 447:7,12,14,15,1 7 448:7 455:5 527:2,6 529:7 535:22 540:7 543:12 544:4 556:4 559:3,4,16 567:15 584:5 586:18 <b>Pepsi</b> 494:18	495:8,11,14,15,1 8 <b>per</b> 323:18,22 395:5,6,10,14,22 401:5,17,20 407:18,19 409:2 412:6 413:20 414:4 416:9,18,20 417:7,11 418:10,13,19 419:9,11,15 424:15 577:6,9,13 <b>percent</b> 307:11 308:2,4 311:11 312:15 313:6,8 339:6,15 341:12,19 342:1 344:4,6,11,13,14 345:6,7 346:16 347:3,4,9,11,17 356:6,9,22 395:17 396:16 398:5 409:8,11 416:9 442:16 445:20 446:3,8,11 462:12 477:9,10,13 478:8 484:7 490:2 528:21 545:2 550:5,13 551:8 559:19 560:10 562:1 565:8,12,13 568:4,8 594:20 602:1 <b>percentage</b> 307:22 308:22 362:2 383:21 385:18,20 386:1,3 390:2 394:15,22	395:1,11,16,17 396:10 397:1 400:17,22 401:8,12 404:10 406:1,4 408:1,8 409:4,15 420:12 423:19 478:9 490:15,18,21 491:4 <b>Perelman</b> 300:11 509:19 524:13 620:1,7 <b>perfect</b> 351:2 493:14,20 496:11 <b>performance</b> 557:9 614:11 618:22 619:3 <b>performed</b> 369:19 <b>performers</b> 346:1 <b>perhaps</b> 460:17 517:16 535:2 538:4 616:22 <b>period</b> 311:17 420:19 421:19,21 423:13,17 437:20 484:9,18 559:9,11,13 566:13,14,16 573:17 593:20 603:20 604:14,20 <b>permanent</b> 530:16 <b>permitted</b> 574:10 620:13 621:22 <b>permitting</b> 627:4 <b>per-play</b> 385:17,20,22 386:4 395:4,21 396:22 400:17	401:3,7,11 403:7,14 406:2 407:17,22 408:21 409:10,17 490:16,22 491:2 <b>person</b> 310:14 338:21 339:22 340:11 428:3 437:20 455:8 478:3 592:16 593:8 612:17 <b>personal</b> 609:21 <b>personalized</b> 555:8 <b>personally</b> 516:11 <b>personnel</b> 463:4 <b>perspective</b> 473:16 533:9 540:16 617:2 <b>persuade</b> 435:20 <b>pertains</b> 327:3 <b>petered</b> 350:3 <b>Pgs</b> 299:8 <b>phase</b> 330:22 525:22 545:6 548:1,15 <b>phenomena</b> 319:21 464:21 488:8 507:11 536:14 <b>phenomenas</b> 547:4 <b>phenomenon</b> 354:12 463:22 535:21 563:12 <b>phone</b> 537:5 538:19 554:19 579:3 <b>physical</b> 435:14,16
---	---	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 42

539:20 549:2 551:21 <b>pick</b> 384:12 <b>picked</b> 384:12 556:18 <b>picking</b> 519:15 <b>picture</b> 523:1,2 524:1 <b>piece</b> 536:16,20,22 537:9 538:15,18 539:2 544:16 545:11,14 <b>piling</b> 623:2 <b>pip</b> 430:19 <b>placed</b> 593:22 <b>places</b> 413:3,6 <b>plan</b> 436:15,16 462:11 563:11 569:10 578:20 579:3,11,20,21,2 2 580:2 607:9 613:21 <b>planning</b> 462:9 <b>plans</b> 563:9 579:9 606:4 <b>platform</b> 493:7,9 502:21 <b>platforms</b> 526:16 <b>plausibility</b> 523:17 <b>plausible</b> 340:12 500:17 <b>play</b> 316:16 348:21 349:13 359:17 366:16 367:10,11 457:7 462:16 523:3 <b>played</b> 358:19,20 359:1,7,9,10,22	360:1,10,12,16 364:10 365:18 371:18,22 375:20 376:1 <b>players</b> 468:8 <b>playing</b> 420:22 <b>plays</b> 316:22 317:5 348:19,20 359:6,16 362:9,20 363:2,5 366:11 376:3 385:15 395:4,5,22 401:16,20 402:3,13,18 403:18 405:14,22 407:18 460:5 463:21 467:12 484:7 489:4,8,18 501:7 <b>please</b> 305:8 367:6 377:12 432:9 434:9 444:19 479:14 509:9 510:16 513:21 521:6 526:8 528:4 549:7,9 551:1 556:12 558:14,22 565:1 575:6 580:20 615:22 620:4 626:15 <b>plentiful</b> 579:17 <b>plenty</b> 624:16 <b>plethora</b> 534:8 <b>plow</b> 624:8 <b>plus</b> 308:2 316:22 382:10 404:11 406:22 425:1 430:14 442:13 443:2 506:2,7,8	586:15 <b>pluses</b> 480:6 <b>point</b> 311:17 316:8 326:15 332:18 336:9 337:4 347:16,20 364:7 380:1 381:7 409:8,17 414:14 416:21 421:4,8 425:9,15 460:22 464:10 476:2,3,7 483:4 501:14 503:17 505:5,7 507:3 514:7 550:9 559:15 564:3,4 565:12 567:9 568:16 569:3 573:19 575:10 578:11 579:12 598:20 606:13 624:17 625:5,6,11 <b>pointed</b> 625:15 <b>pointing</b> 404:19 554:7 <b>points</b> 392:13 521:3 543:8 591:11,22 592:9,12,14 <b>Point's</b> 557:1 <b>political</b> 325:6,9,13 326:16 327:3 <b>politically</b> 553:7 <b>popular</b> 353:9,11 366:4 367:16 370:6 372:1,21 373:5,7 <b>popularity</b> 354:22 355:21 356:4 370:14,19	371:20 372:19 373:1 378:4 379:21,22 380:3 381:18 <b>population</b> 371:16 420:9,10 <b>portion</b> 435:22 436:2 475:9 478:19 528:9 554:2 <b>positing</b> 489:16 <b>position</b> 335:6 510:21 511:2,10 512:2 573:21 574:1 595:5 621:8,12 <b>positions</b> 511:20 <b>positive</b> 498:13 601:5,18 618:2 <b>positives</b> 450:2 <b>possession</b> 329:14,15 <b>possibility</b> 454:20 466:14 504:12,18,19 <b>possible</b> 334:22 337:5 339:16 356:16 477:1 506:5 604:5,6 607:17 <b>possibly</b> 318:17 <b>post</b> 511:4 <b>posted</b> 376:21 378:14 <b>poster</b> 391:19 <b>posts</b> 610:7 <b>posture</b> 551:4 <b>potentially</b> 583:20
--	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 43

611:22	<b>Preexisting</b> 299:6	<b>pressured</b> 314:9	618:3
<b>power</b> 331:20	<b>prefer</b> 519:20	<b>presumably</b> 601:3	<b>primary</b> 559:22
496:16	563:19	<b>pretty</b> 430:4,6	<b>principle</b> 340:8
497:15,17	<b>preference</b> 535:14	444:9 493:22	344:20
499:15,18	<b>premise</b> 427:1	495:18 542:4	<b>printed</b> 380:20
500:11 501:3	481:14 522:22	563:5	<b>prior</b> 312:19
532:17 534:1	<b>premium</b>	<b>prevented</b> 393:2	456:18 538:17
<b>powerful</b> 317:1	412:11,13,15	<b>previously</b> 305:4,5	562:21
438:21 480:21	430:11,15	432:6 476:12	621:14,19 622:2
534:6 545:17	<b>preparation</b>	602:8	624:14
<b>practice</b> 343:11	570:16	<b>price</b> 340:1 408:17	<b>private</b> 313:22
344:1 624:19	<b>prepare</b> 535:4	410:14 411:3,10	460:21
<b>pre</b> 485:1	<b>prepared</b> 580:13	412:5 413:8	<b>privately</b> 462:15
<b>pre-1970</b> 484:20	581:13 583:8	414:2,3,7 418:3	<b>probably</b> 308:6
<b>pre-1970s</b> 485:2	592:16 593:8	419:2,19 421:20	362:17 364:5
488:15	597:5,8	424:14	421:9 427:17
<b>pre-'70</b> 485:13	<b>preparing</b> 462:9	425:10,11,17,18	438:5 482:17
<b>precedent</b> 386:10	492:21	433:7 463:21	503:22 509:2
<b>precedential</b>	<b>presence</b> 336:1	469:4 480:4	526:22 565:19
331:18 392:1	388:7 427:5	481:16	624:10
<b>precise</b> 316:8	431:6 467:13	482:5,9,14,15	<b>probative</b> 388:18
406:15 486:20	470:6 566:22	490:20	393:12
487:7	567:12	494:17,20	<b>problem</b> 340:21
<b>precisely</b> 352:8	<b>present</b> 311:22	495:6,14 496:6	341:1 373:19
441:3 463:22	312:10 319:10	497:19 499:7,22	429:2 431:2
464:12	458:6 462:14	502:7,11 503:6	495:22 525:17
<b>precluded</b> 329:21	<b>presentation</b>	504:6 506:6	532:11 562:10
<b>predict</b> 532:15,20	576:4,17 578:8	543:8 563:11	575:7 606:18
584:18 607:12	580:13 589:7	564:18	609:19 612:4
614:21 618:4	590:16 591:9	565:5,16,18,22	617:5
<b>predicting</b> 337:8	<b>presented</b> 516:18	567:2 593:15	<b>procedural</b> 327:4
574:20	576:18 589:22	601:17 602:19	332:17
602:18,20	<b>presenting</b> 626:20	<b>prices</b> 333:21	<b>procedure</b> 327:14
<b>prediction</b> 336:5	<b>presents</b> 319:14	411:9 412:12	<b>procedures</b> 319:1
337:1,3,4,5	<b>president</b> 510:22	413:18 457:5	320:11,15,18,21
601:16	511:12,14	482:20 494:19	321:1,9,12,16
<b>predictions</b>	526:10	495:8,11 566:12	322:2,5 323:21
340:15,16 341:6	<b>press</b> 517:3	574:17 593:20	324:14,17
574:14	570:15,19	594:12	325:15
		<b>price-sensitive</b>	326:19,21 327:1
		563:7	
		<b>primarily</b> 307:13	



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 44

<p>329:12  <b>proceed</b> 326:20  432:10  <b>proceeding</b> 319:20  329:22 331:22  334:3,4,17  335:5,8 338:6,7  339:14 340:19  456:19 457:1  458:6 459:3  460:2,13,19  462:9 464:3  465:22 471:10  476:5 491:15  492:22 504:2  506:1 513:18  519:21 520:2,13  531:13 533:6  582:2 620:13  621:19 622:2  623:3 624:14  <b>proceedings</b>  299:15 329:20  337:9,12,18,19  338:14 517:1,10  519:16  520:15,19 535:8  625:2  <b>process</b> 317:2  320:1 322:9,14  323:13,18  324:18 333:6,22  334:8 335:1,18  336:2,6,10,12  340:7 348:1  378:15 380:7  386:18,22  387:14 388:19  389:2 470:9  471:17 480:17  481:3 482:22  559:7  <b>processes</b> 321:8</p>	<p>323:7  332:8,10,13  <b>produce</b> 346:9,11  347:6 376:20  385:5 395:8  449:14 463:18  490:12  <b>produced</b> 314:15  381:13  382:2,9,16 472:1  474:11 596:20  <b>producer</b> 499:11  <b>producers</b> 502:12  <b>produces</b> 320:7  346:19 406:4  <b>producing</b> 362:10  375:16 382:11  <b>product</b> 355:8  400:5 435:16  450:8 482:16  493:1,11  494:14,19  496:20  497:3,10,16  498:17  499:1,10,14,15  500:4  502:8,13,14  503:7 505:10,13  507:12,13,14,18  529:9 540:19  541:17 542:9  <b>production</b> 327:16  381:16  <b>products</b> 512:14  <b>professional</b>  586:14  <b>Professor</b> 318:6  416:22 475:8  484:3</p>	<p><b>proffer</b> 514:11  622:19  <b>proffered</b> 516:12  <b>proffering</b> 622:3  <b>proffers</b> 573:7  <b>profits</b> 491:17  <b>profound</b> 464:18  <b>program</b> 355:18  360:2 430:17  586:8  <b>programmers</b>  586:14  <b>programming</b>  362:4 380:2  529:5  <b>project</b> 606:19  <b>projection</b> 597:5,8  606:21,22  <b>projections</b> 576:15  <b>promise</b> 348:18  <b>promises</b> 531:7  <b>promoted</b> 544:11  <b>promotion</b> 443:10  498:7,9  <b>promotional</b>  443:16 498:18  501:16,17  <b>prompted</b> 392:18  <b>prone</b> 478:1  <b>pronounced</b> 520:3  <b>pronunciation</b>  519:19 520:3  <b>proper</b> 465:10  612:8  <b>property</b> 458:4  <b>proportion</b> 310:2</p>	<p><b>proportional</b>  370:19  <b>proposal</b> 473:6  <b>propose</b> 523:19  <b>proposed</b> 319:7  458:4 517:13  <b>proposing</b> 523:3  <b>proposition</b>  317:15 443:15  515:20  <b>prospect</b> 317:5  363:3,21 458:12  460:2  <b>protective</b> 305:22  <b>provide</b> 334:19  370:21,22  398:17 440:1  524:2 547:5  <b>provided</b> 494:10  497:13 506:6  580:6  <b>provider</b> 492:14  493:9 502:22  539:13  <b>providers</b> 502:21  551:14  <b>provides</b> 518:18  <b>providing</b> 551:14  627:9  <b>provision</b> 439:22  <b>provisions</b> 439:12  <b>proxy</b> 489:4,14  <b>PSS/Satellite</b>  299:5  <b>public</b> 299:19  313:22 326:7  330:17 340:22  375:14 460:20</p>
---	---	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 45

502:9 503:4,6,10 563:14 590:5 628:18 <b>publication</b> 520:18 <b>publicly</b> 340:18 602:22 <b>published</b> 378:19 379:13 386:13 398:21 <b>puffery</b> 524:22 525:4,14 583:22 <b>pull</b> 346:20 350:7 <b>pun</b> 524:3 <b>purchase</b> 419:2,19 <b>purchased</b> 376:10 <b>purchaser</b> 537:2 <b>purchases</b> 447:9 <b>purchasing</b> 445:4,15,20 <b>pure</b> 333:20 <b>purely</b> 423:15 <b>purporting</b> 393:5 <b>purpose</b> 355:6 433:14 459:19 624:7,11 <b>purposes</b> 322:20 377:19 414:19 444:2 450:15 461:14 472:4 474:3 513:8 571:11 581:1 589:11 596:6 608:7 610:14 <b>pursuant</b> 620:1,14 <b>push</b> 585:20 <b>pushes</b> 587:11	<b>puts</b> 333:17 <b>putting</b> 351:1 438:16 532:20 561:3 <b>puzzled</b> 486:13 <hr/> <b>Q</b> <hr/> <b>Q3</b> 608:22 <b>quadrupling</b> 363:4 <b>qualifications</b> 379:2 <b>qualitative</b> 399:21 447:6 <b>qualitatively</b> 399:18 <b>quality</b> 353:2,6,7,9,11,1 3,19 354:21,22 364:17,21 367:13 368:11 369:5,11,20 370:3 371:2 380:10 430:12,15 <b>quantitative</b> 371:5 379:16 447:6 <b>quantity</b> 506:8 <b>quarter</b> 361:1,16 363:10,17 364:4 375:18 376:4 528:12 568:9 570:12 601:21 602:5,15 610:18 <b>quarterly</b> 565:16 610:21 <b>question</b> 309:10 310:15 311:22 312:10 318:16 320:16,17	324:21 326:22 335:14 358:1,17 362:6 363:13 371:13 380:15 387:19 388:5,8,10 389:8 390:4 394:1 419:1 420:3,6 421:6 424:2 425:19 427:1,9,12 428:15 429:5,17,18,21 435:11 440:8 445:7,14 455:3,20 459:12 463:10 465:15 466:6 467:3,9,17,18 469:12 478:13 481:1,10 485:8 492:5,17 494:8 502:3,6 507:17 520:22 524:18 582:15 591:20,21 592:7,8 603:9 604:18 607:18 610:14 615:22 <b>questionable</b> 563:10 <b>questioned</b> 471:4 <b>questioning</b> 353:15 609:19 613:1 <b>questions</b> 311:14 313:1 389:11 392:17 422:16 443:9 456:5,17 459:8 471:6 478:6 479:9 484:3 508:16 572:15 573:1	582:22 616:4,7,20 618:14 619:18 <b>queue</b> 537:18 <b>quick</b> 380:14 388:10 <b>quicker</b> 555:15 <b>quickest</b> 555:13 <b>quickly</b> 541:17,22 544:22 555:19 573:13 <b>quite</b> 508:2 529:6 556:20 583:17 587:6 614:15 <b>quited</b> 595:13 <b>quote</b> 323:12 462:8 465:19 466:3 470:22 472:19,21 473:1,8,10,17 476:17,22 552:13 558:15 623:4 <b>quote/unquote</b> 316:7 <b>quoted</b> 570:14 612:5 <hr/> <b>R</b> <hr/> <b>radio</b> 299:7 353:12 354:8 365:13,18 367:1 371:19 380:2 398:12 399:1,14,16 416:10,15 436:18 437:10 438:20 439:2 442:8,18,20 443:15 445:9 446:1,17 456:18 458:5 482:19
---	--	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 46

486:7,18 501:5,9,11,17,18 504:11 510:20 512:16 526:16 528:6,17 533:10 534:13 537:16 539:20 543:7 549:1 551:22 552:1,20,21,22 553:9,11,18 554:3,12,20 555:2,4,5,6 556:13 561:12 562:13 567:19 568:3 571:16 587:9,11 618:18 619:13 <b>radios</b> 430:21 435:1 436:10,17 442:11,12 <b>RadioShack</b> 528:17 <b>railroads</b> 488:3,5,6 <b>raise</b> 306:3 308:7 389:7 566:12 574:17 593:20 594:11 <b>raised</b> 521:1 573:3,16 601:9 <b>raises</b> 308:15 375:14 492:19 <b>raising</b> 565:7 <b>ran</b> 512:4,19,21 538:2 <b>Randi</b> 300:10 509:17 <b>randi.singer@weil</b> <b>.com</b> 300:19 <b>range</b> 337:5 365:13	384:10,17 385:5 396:2 401:5 402:7 403:5 559:19 562:1 <b>ranked</b> 376:17 379:11 381:21 <b>ranking</b> 379:12,14 <b>rapid</b> 515:22 604:9 <b>rapidly</b> 554:20 <b>rarely</b> 359:22 <b>rate</b> 307:11 311:5,6 312:7 313:3,4,8 315:10,12,13,14, 15,20,22 316:1,12,13,21 317:4 318:2 319:7,11,12 333:5,15,20 335:1,8,12,19 336:11 337:9 338:13 339:6,14,19 340:20,21 347:10,11 359:4,15 360:11,15 363:11,18 364:6,9,10,12 366:13,20 384:10 385:7,8,11,18 386:3,21 387:1,5,10,16,17 388:1,2,12,13 391:10,11,20,22 392:5 395:4,11,16,17,2 1 396:13,22 397:1 400:17,22 401:1,3,7,8,9,11, 12 403:7,14	404:11 405:20 406:2,4,19 407:3,9,17,22 408:1,2,4,10,13, 21 409:4,9,10,15,17 412:16 423:9 437:11 460:12 462:10,12 463:17 464:19 465:21 466:21 467:4,11,14,21 468:4,9 469:15 477:9,12,13 480:17 490:11,15,16,18, 19,21,22 491:2,3,4 496:15 500:15 507:4,6 543:19 549:9,15 553:14 558:4 559:18,20,22 564:9 601:22 602:19 603:19 604:20 <b>rates</b> 299:6 335:22 336:4 383:10,15,20 384:6,10,12,15,1 7 385:1,6,14,20,21 ,22 386:1,3,9,13,17 387:6,16,20,22 388:8 392:1 396:2 399:20 400:11,13 406:8,14 410:2 456:20 462:11,14,16 463:6 466:10 477:1 491:10 506:19 564:2 565:8 600:18	601:5,10 <b>rather</b> 306:12,13,14 339:6 340:1 341:5 346:16 347:3 392:2 405:22 459:3 465:10 531:14 <b>rating</b> 489:19 <b>ratings</b> 373:20 485:22 489:11 <b>rational</b> 341:7 459:1 <b>RCA</b> 512:8,11,12,21 <b>reach</b> 347:21 538:21 556:4 587:5 <b>reached</b> 314:4 370:2 481:4 <b>reaching</b> 462:19 <b>react</b> 564:8 <b>reaction</b> 455:8 458:11 460:2 464:6 <b>reading</b> 310:12 406:10,12 433:1 441:18 448:2 570:15 <b>reads</b> 462:8 465:18 <b>real</b> 328:4 388:19 429:2,21 495:10 <b>realistic</b> 363:3 <b>realistically</b> 361:16 <b>reality</b> 368:2 396:8 <b>realize</b> 605:11
---	--	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 47

617:6 <b>real-life</b> 524:2 <b>really</b> 311:2 312:4 315:19 325:14 326:18 347:10 349:14 351:14 359:19 362:3,12,16 363:10,17 364:9 366:4,5 368:3 371:6,8 393:15,16 430:4 446:14 451:10 496:14 501:6 525:6,7 539:5 548:4 553:2 563:19 586:18 614:8 621:5,6 623:5  <b>reason</b> 316:11,17 349:8 365:15,16 370:19 384:20 388:16 437:12 453:15 490:14 500:10,12,13 518:21 554:1 555:3,11 561:10,22 562:17 568:5,11 570:20 599:2 611:9,10 614:14 623:15 624:1,3  <b>reasonable</b> 316:21 317:4 <b>reasonableness</b> 316:7 <b>reasonably</b> 464:13 523:16 548:8 <b>reasons</b> 321:15 339:5 365:14 422:13 424:19 459:1 522:15	563:20 578:17 621:20 <b>reassemble</b> 587:15 <b>rebut</b> 392:4 <b>rebuttal</b> 330:21 331:3,6,8 393:10 525:22 <b>recall</b> 322:14 328:4,20 360:18,21 384:22 392:18 413:19 421:12 439:6 471:12 475:20 517:12 531:12 552:14,18 580:13 599:18 621:22 626:2  <b>receive</b> 463:21 478:7,10 533:16 578:21 <b>received</b> 329:1 383:9 <b>receiver</b> 439:2 442:8 <b>receivers</b> 435:5,6,13,21 436:4,21 437:5 <b>receives</b> 346:7 <b>receiving</b> 436:10,19 <b>recent</b> 404:1 574:8,22 <b>recently</b> 421:11 <b>recess</b> 377:7,8 431:8,12 509:5,6 520:8 <b>recession</b> 562:21,22	<b>recitation</b> 465:12 <b>recognition</b> 463:3  <b>recognize</b> 323:4 415:2 513:16 528:16 551:22 571:16 608:17  <b>recollection</b> 440:18 475:14  <b>reconvene</b> 431:9 626:11 627:14  <b>record</b> 306:8 314:21 315:8,13 317:22 318:4,21 319:2 324:3,11 325:5 326:9 327:6 328:11 329:2,15 330:17 332:7 341:12,19 342:1,4 343:5,7 344:5,6,12,14,22 345:5,11,22 346:3,6,8,15,18, 22 347:1,7,18 348:5 349:2,8,15 350:10,11,22 351:9 352:4,5 363:1,8 366:13 369:3 383:3 402:4 414:15 449:13 450:18 452:16 456:21 457:6,13,22 458:7,15 459:2,17 460:1 463:6,9,11,20 464:1 465:21 466:3,13 467:5 469:18 471:17 472:8 479:6 484:6 491:17,18 501:7 505:8 506:5 510:17 516:3 520:18	521:13 533:7 615:13 618:22 623:5,10 628:7  <b>recorded</b> 487:11 570:11  <b>recording</b> 313:12 333:8 342:16 343:4 345:20 356:13 358:14 364:18 619:2  <b>recordings</b> 307:10 346:9,12,20 347:6 350:15,16 351:12 353:2,19 354:6,8,21 360:2 365:2,5 366:3,8,9,22 367:15 368:11 369:5 370:4,5,7 371:2 372:16 373:4 374:10 375:3 385:15 457:8 484:20 485:3,14  <b>records</b> 345:18 346:11 366:16 367:18 372:6 375:6,8,16 376:1,16 379:18,19 489:7 519:4  <b>record's</b> 556:12 <b>Records</b> 360:18 361:16 374:17 375:2 376:7  <b>recoup</b> 342:8 343:8 344:7,14 345:1 348:20  <b>recouping</b> 345:8 478:22  <b>recover</b> 491:11,19 493:15
---	--	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 48

566:14,19 <b>recross</b> 483:16 <b>redirect</b> 303:3,7 455:22 456:2,10,12,15 483:14 615:22 616:12 <b>reduced</b> 487:10 502:20 628:6 <b>reduces</b> 470:1 <b>reducing</b> 502:8 <b>refer</b> 398:22 399:1 452:6 497:9 545:8 566:4 588:8 592:8,11 <b>reference</b> 353:6 473:4,11 514:3 549:11 566:7 620:19 625:15 <b>referenced</b> 515:18 517:16 <b>referencing</b> 486:9 <b>referred</b> 378:2 451:17 522:18 592:8 <b>referring</b> 325:13 390:19 418:19 434:14 442:12 450:18 477:20 518:1 549:18 592:15 618:9 619:2 <b>refers</b> 320:14 321:5,9 322:13 325:19 353:9 369:15 407:3 451:22 592:10 <b>refined</b> 398:15 <b>reflect</b> 379:15,20 416:19 421:19	425:7 <b>reflected</b> 383:10 425:13 426:2 439:2 462:14 <b>reflecting</b> 457:5,12,15 460:4 496:16 <b>reflector</b> 609:20 <b>reflects</b> 319:8 379:21 389:2 425:8 434:20 435:19 <b>refresh</b> 475:13 623:13 626:4,15 <b>refuse</b> 316:11 334:12,14 451:14 452:12 <b>regard</b> 317:4 379:18 397:10 437:6 452:20 500:21 <b>regarded</b> 386:16 <b>regarding</b> 329:19 580:14 591:12 592:1 <b>regardless</b> 359:3,18 <b>regime</b> 333:13 <b>regular</b> 386:21 563:1 <b>regularly</b> 611:2 <b>regulated</b> 387:16 388:1,12 470:3,4 <b>regulation</b> 470:6 <b>regulations</b> 620:2,14 <b>regulators</b> 325:21 <b>regulatory</b> 320:4	333:10,13,22 334:8 335:1,18 336:2,6,10,12 386:18,22 387:1 467:21 470:9 481:3,12 <b>rehearse</b> 573:10 <b>reject</b> 315:17 <b>relate</b> 435:4 <b>related</b> 628:9 <b>relates</b> 308:8 481:1 542:11 <b>relating</b> 425:16 481:2 <b>relation</b> 477:18 530:18 <b>relationship</b> 323:20 387:4 434:21 481:16 489:16 504:21,22 506:21 536:5 <b>relative</b> 385:20 501:7 628:11 <b>relatively</b> 366:10 413:3 491:2 536:15,22 559:2 605:19 <b>relatives</b> 362:14 <b>release</b> 452:12,21,22 453:13 461:21 535:4 570:15,19 615:22 <b>released</b> 452:13,14 453:15,21 454:1,7 <b>releasers</b> 375:8 <b>releases</b> 351:8	450:21 451:14 452:9 453:10,20 517:3 <b>relevance</b> 622:19 <b>relevant</b> 328:8 396:21 397:10 399:2,3 412:4 540:17 572:19 574:21 623:14 <b>reliability</b> 614:22 <b>reliable</b> 518:21 554:1 <b>relied</b> 373:16 444:12 <b>relief</b> 523:16 <b>reluctance</b> 463:15 <b>rely</b> 354:7 444:13 <b>relying</b> 444:22 <b>remain</b> 467:5 558:16 <b>remaining</b> 382:14 456:17 565:15 603:3 <b>remember</b> 310:4 316:18 336:8 361:2 362:5 395:7 406:10 439:7,9 441:1,3 449:5 450:10 478:11 488:1 606:1 607:1 <b>remind</b> 582:13 <b>remiss</b> 509:14 <b>remove</b> 466:15 <b>Renew</b> 611:18 <b>renewing</b> 573:3 <b>repayment</b> 438:17 <b>repeat</b> 568:1
---	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 49

<b>repeater</b> 529:22	364:17 472:8	393:18 463:19	600:18
<b>repeaters</b> 530:3 539:17	<b>representativeness</b> s 352:9 354:20	516:13 524:19 573:12	<b>retain</b> 425:18
<b>replace</b> 436:9	<b>represented</b> 308:1 319:6 338:12 350:20 390:12	<b>respondents</b> 425:20 428:6 446:15	<b>Retained</b> 304:10
<b>replaced</b> 532:18	<b>representing</b> 319:9	<b>responders</b> 546:7	<b>retaining</b> 560:19 563:16
<b>replacement</b> 532:21	<b>represents</b> 465:20	<b>response</b> 325:1 454:19 515:15	<b>retrofit</b> 436:9 441:11
<b>replacing</b> 607:10	<b>reproduced</b> 376:21	<b>responses</b> 445:8	<b>retrofitting</b> 436:16
<b>report</b> 312:7,8,18 370:3 393:10,21 396:3,4,11 410:1 415:3,10 416:1 425:3 427:20 447:17 448:5,12,19 464:12 480:1 486:21 487:6 517:13 526:14 527:2,5,8 581:8,12	<b>reproduction</b> 376:19	<b>responsibilities</b> 526:9,12 527:17	<b>return</b> 317:5 346:11 393:11 491:8
<b>reported</b> 380:3	<b>reputable</b> 516:3	<b>responsibility</b> 341:15	<b>reveal</b> 463:3
<b>reporter</b> 509:4 628:1,2	<b>requests</b> 327:16,20 328:2,5,21 473:3	<b>rest</b> 313:14 430:5 504:17 519:21	<b>revealed</b> 312:2,9
<b>Reporting</b> 299:19	<b>require</b> 420:15 625:19	<b>restrict</b> 305:21 404:17 411:7	<b>revenue</b> 366:21 386:3 390:2 395:10 396:10 397:1 400:17,22 404:10 406:1 407:14 408:6,8,11,14 409:2,3 416:18,20 417:6,11 418:10,13,19 419:9,11,15 423:2,3,4,10,12 424:21 433:17 434:6 435:22 441:19,20,21 490:11 502:16,18 528:7,9 576:10,22 577:5,6,9,15 601:6,7,8
<b>reports</b> 368:7 517:2 526:20 555:17	<b>required</b> 404:9	<b>restricted</b> 306:6 404:15,21 434:8 472:6 582:14 590:12 598:22	<b>revenues</b> 307:11 342:16 394:15 396:16 409:4,10 419:2,19 423:19 438:1 439:18 477:10,11,13
<b>represent</b> 332:22 336:5 350:14 351:6 354:2 361:3,5,11 472:11 570:8	<b>requires</b> 331:18 499:16 625:21	<b>restrictions</b> 393:8	
<b>representation</b> 523:18,20	<b>rerecordings</b> 375:6,16	<b>result</b> 317:20 321:14 338:13 416:8 417:10 445:19,22 446:17 506:3 544:13	
<b>representations</b> 339:13,18 526:2	<b>rerecords</b> 375:3,10,19	<b>results</b> 320:7 321:4 388:19 423:21 424:9 426:19,22 446:20 448:9 449:15,20 490:12	
<b>representative</b> 350:1,11,15,21 352:4,8 353:18 354:1,10,16	<b>research</b> 568:13 589:20 617:5	<b>RESUMED</b> 432:14	
	<b>resides</b> 537:1	<b>retail</b> 594:12	
	<b>respect</b> 305:17 306:1,16 325:22 327:5 337:8 344:18 367:20 371:1 374:15 383:13 388:15 419:18 550:7 574:15 583:6 584:17 620:18 626:8		
	<b>respond</b> 317:17		

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 50

506:9 601:18 <b>revenue-sharing</b> 439:12,22 <b>reverted</b> 457:19 <b>review</b> 329:4,6 394:12 571:6 611:4,6 <b>reviewed</b> 338:10 460:15 475:15 <b>reviewing</b> 326:5 <b>reviews</b> 368:8,19 382:6 405:10 416:3 434:1 <b>revised</b> 368:13 <b>revolve</b> 310:18 <b>Rhapsody</b> 584:20 <b>Rich</b> 300:7 303:5,8 318:15 389:11 390:7 391:12 392:12 394:3 404:22 434:9 456:1,2,3,14 458:19 459:11,21 460:22 461:7,19 467:16 471:21 472:5,15 473:4,7,21 474:4,10,14 475:1,6,7,10 476:10 483:2,13 508:17 509:10,12 510:3,13 513:3,9,11,14,15 514:6 515:17 518:7,13 519:5,9,18 520:2 521:17 522:17 524:8,11,17 526:6,7 527:15	531:21 538:11 539:8 543:16 552:15 556:10,17,21 557:2 568:17 569:16 572:5 573:2 582:6,13 591:1 598:4 605:4 609:12,14 611:18 615:15,21 616:3,9,14 618:13 619:20 623:3 626:13,17,22 627:3,7 <b>Rich's</b> 573:21 <b>right-hand</b> 380:17 <b>rights</b> 328:13 333:8 453:19 454:18 456:22 458:2 466:2 478:4 480:11 482:19 495:1,4 499:20 503:18 504:1,10 505:3,9,11,13 507:22 508:8 619:13 <b>risen</b> 533:22 <b>rising</b> 560:1 <b>risk</b> 363:17,20 607:6,19,22 614:3,6 <b>risks</b> 615:7,10,14 <b>risky</b> 336:14 <b>RMR</b> 628:18 <b>RMR/CRR/CSR/ RPR/CCR/RSA</b> 299:18	<b>Robert</b> 621:1 <b>Roberts</b> 300:3 309:7 311:15 318:6,14,18 350:6 390:18,21 391:3,7 448:2 475:5,8,13 476:9 514:13 516:22 517:15,21 524:6,9,14 525:21 531:12,17,20 538:9 552:15 554:11 556:9,11,17,19 568:19,22 569:11,15 572:20 581:15,21 583:4,11 584:1,11,14 605:9 612:10,16 619:5 620:4 624:5 625:14,18,21 626:13,19 627:2,5,11 <b>robust</b> 393:4 <b>rock</b> 541:22 542:1,2 562:13 <b>ROGER</b> 303:3 305:3 432:4 <b>role</b> 462:17 <b>roll</b> 544:1 563:11 569:10 <b>rolling</b> 553:18 <b>rollout</b> 545:6 <b>Ron</b> 627:1,2 <b>room</b> 461:16 <b>Rosie</b> 584:10,11	<b>rough</b> 421:12 <b>roughly</b> 310:3 405:4 421:12 533:1 567:19 <b>round</b> 313:2 <b>Royal</b> 495:20 <b>royalties</b> 342:9,14 343:6 344:5,12 345:1,6,13 346:4,16 347:18 363:9,15 395:15 397:3 423:16 478:8,19 502:19 566:16,20 594:17 618:22 619:5 <b>royalty</b> 299:1 300:2 323:17 324:20 341:12 342:1 347:2,3,8 359:4,15 360:11,15 361:12 383:22 395:9 396:1 399:20 400:11 407:12 408:1,4,22 409:1,9 423:9 463:18 467:4,15 469:16 477:1,8 478:10 490:21 566:5,19 567:1 594:13,16,17 599:3,6 600:14 <b>RPR</b> 628:18 <b>RSA</b> 628:18 <b>rule</b> 516:16 520:13 621:9 624:7 625:18 <b>ruled</b> 626:3 <b>rules</b> 327:10,13
--	---	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 51

329:19 332:17 387:2 516:4 573:16,20 <b>ruling</b> 474:16 <b>run</b> 451:5 532:16 538:2,4 563:4 <b>running</b> 351:13 553:22 558:3 624:5 <b>runs</b> 378:16,22 380:7 565:17 <hr/> S <hr/> <b>Sabrina</b> 300:11 509:19 620:7 <b>sabrina.perelman</b> <b>@weil.com</b> 300:20 <b>safety</b> 545:22 546:20 550:15 <b>sake</b> 403:16 424:20 <b>sale</b> 495:19 <b>sales</b> 355:21 356:3 379:20 441:4,22 468:5 498:10 510:22 511:12,15 526:10,21 557:19,22 558:3,5 588:19 589:1 <b>sample</b> 417:17,18 420:1,3,7,10 <b>sampling</b> 420:2,7 <b>Samsung</b> 540:4 <b>sat</b> 538:19 <b>satellite</b> 299:7 408:18 409:20	410:13 414:8 416:10,15 430:19 433:7,9,10 435:16 436:11,19 437:7,9 443:15 445:9 446:1,17 456:18 458:5 486:17 501:18 504:11 512:16,17 526:16,17 529:12,18 530:2,5,15 532:8 533:3,4,10 534:13 537:16 539:20 549:1 552:19 555:2,6 567:18 568:2 586:7 605:22 606:14 613:16 614:20 615:5 620:13 <b>satellite-based</b> 529:15 <b>satellites</b> 430:21 530:16 531:14,22 532:12,14 539:16 605:21 606:4,15 607:8,21 614:5,10 <b>satisfy</b> 550:15 <b>satisfying</b> 353:10 <b>saw</b> 381:4 384:9 402:8 403:9 473:15 600:5 619:8 <b>scares</b> 617:16 <b>scary</b> 536:8	<b>scattered</b> 509:18 <b>scenario</b> 500:17 596:17 <b>Scenarios</b> 596:18,19 <b>scheduled</b> 606:8,10 <b>schedules</b> 594:22 <b>scheme</b> 333:10 341:18,22 345:7 355:20 <b>Schiller</b> 300:9 509:18 <b>scope</b> 399:12 458:18 573:4 <b>screen</b> 538:22 <b>SDARS</b> 338:6 492:15 494:6 496:1 <b>se</b> 323:18,22 <b>seamlessly</b> 544:18 <b>seat</b> 538:20 <b>seated</b> 305:8 377:12 432:9 509:9 521:6 575:6 <b>Sebo</b> 299:18 628:2,18 <b>SEC</b> 571:7 <b>second</b> 414:6 418:17 432:20 454:22 476:15,17 500:13 509:16 526:20 541:10 560:2 561:22 595:22 618:21 624:18	<b>secondary</b> 469:2 <b>secondhand</b> 338:17 <b>secondly</b> 312:6 499:16 <b>seconds</b> 523:4 <b>section</b> 369:8,10 410:1 440:13 448:11 479:18 480:1,2 491:7 <b>security</b> 545:22 546:20 550:15 <b>seeing</b> 372:17 559:18 609:20 <b>seek</b> 462:10,11 <b>seeking</b> 477:12 <b>seem</b> 340:12 461:15 553:14 554:4 <b>seems</b> 384:16 388:17 390:16 393:15 458:18 491:15 574:20 596:3 612:8 621:4 <b>seen</b> 312:5 338:10,16,19,22 381:16 402:15,21 403:22 415:5,6 462:1 472:16 475:18,20 476:1,6,11 538:9,14 544:10 557:19 <b>segment</b> 313:12 <b>self-competition</b> 453:8 <b>self-pay</b> 599:17
--	--	---	---



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 52

<b>self-paying</b> 560:4	<b>seriously</b> 464:20	400:11,12	434:6 435:21
<b>sell</b> 340:12 356:15	<b>serve</b> 327:16	411:5,7	436:1 441:19,20
454:17,22	<b>served</b> 328:3	412:3,7,13	468:20 500:1,13
500:3,5	520:21	413:21 439:21	592:22
<b>seller</b> 307:9 336:18	<b>service</b> 366:1	448:13	<b>shareholders</b>
386:19 387:15	383:21 384:13	451:13,15	572:18
389:3 457:16,18	387:22	452:4,15 454:13	576:2,4,13,18
468:3 478:1	396:17,18,19	477:2 481:11	<b>sharing</b> 441:21
<b>sellers</b> 464:15	397:5,10	482:18 501:10	<b>She's</b> 584:13
467:22 491:11	399:10,20	504:13 533:16	<b>shift</b> 542:21
<b>selling</b> 347:16,20	400:6,8 408:18	534:8 535:17	<b>shifted</b> 529:2
436:21 441:8	409:13,20	536:1 537:7	<b>shock</b> 520:11
451:13 453:4	410:13,15,16	540:8 543:17	<b>shop</b> 436:18
501:14 540:10	411:21 412:8,14	544:9 545:19,21	<b>short</b> 393:13 451:5
544:14	413:10 414:8	546:20	<b>shorter</b> 548:21
<b>sells</b> 453:19	416:10 420:16	547:19,20	<b>showed</b> 377:22
<b>semi-interactive</b>	421:2	551:15 552:6	604:9
585:19	427:10,12,14	553:15 554:5	<b>showing</b> 322:22
<b>send</b> 607:1	428:16 430:14	555:10 574:15	444:4 571:13
<b>sender</b> 472:7	433:8,9	579:2 580:15	576:9,11,12
<b>sense</b> 336:13	437:7,10,19	584:20 585:5	581:3 608:13
356:18 407:8	441:9,15 443:5	588:7	<b>show-me</b> 557:22
430:3 505:2	452:7 454:14	<b>sets</b> 467:21	<b>shows</b> 523:4
563:14	485:18 502:6	<b>setting</b> 464:19	575:16,19
<b>sentence</b> 369:15	504:11 507:3	471:8 480:17	576:9,21,22
451:22 472:20	527:10,13	495:8	577:5,9 617:8
476:17 556:19	535:10	<b>settle</b> 378:18	<b>sided</b> 491:14
567:11 618:21	538:19,22	<b>Settlement</b> 389:14	<b>sides</b> 327:7,11
<b>separate</b> 408:20	539:3,13	<b>set-top</b> 512:16,19	333:4 335:7
466:1 487:14	541:9,10,16,18	<b>several</b>	481:15
530:9	546:22 548:6	375:4,11,13	<b>sign</b> 314:6,10
<b>sequence</b> 428:20	551:21 553:21	411:5,12 412:12	316:16,17 317:8
429:16 626:17	555:18 559:8,12	434:19 487:3	336:17 339:6
<b>sequencing</b> 428:13	561:6 562:2	528:4 531:5	347:14 348:10
<b>series</b> 312:22	568:1 578:21	534:12 606:5	349:9,15,22
321:6 392:17	584:12	607:21 617:8	350:2,10,12
471:5 478:5	585:8,10,12,13,1	<b>shaded</b> 434:6	368:9 443:5
479:8 535:16	8,21 587:13,16	<b>share</b> 343:8	460:10 465:2
539:11	<b>services</b> 299:7	345:13 355:13	480:5,8,19
	383:6 394:18	356:6 358:13	
	396:13,14	359:16 407:14	
	397:15,16	412:1 433:17	
	398:9,17 399:4		

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 53

500:15	<b>simpleminded</b>	550:20 552:19	438:13,14,20
<b>signal</b> 529:21	482:2	553:5 571:6	443:2 456:21
<b>signaled</b> 565:4	<b>simplest</b> 535:2	576:12 584:6	457:8 460:5
<b>signals</b> 436:11,19	<b>simplified</b> 383:16	593:19 600:20	461:10,12,13
<b>signatory</b> 478:15	<b>simply</b> 326:15	601:9 606:4	463:5 464:1
<b>signature</b> 513:22	336:4 339:17	<b>Sirius/XM</b> 593:18	467:7 471:9,22
<b>signed</b> 310:1,20	372:6 392:22	<b>SiriusXM</b> 300:6	472:3 473:2,21
312:18 316:19	424:2 472:19	303:11 305:16	474:2,5,12,20
317:7 337:10	489:21 491:22	307:10,14,18	475:3 478:8
339:17 347:18	503:3 516:8	308:1 309:19	480:12,15
348:7,13 349:6	517:16 518:1	310:17 311:1,3	483:11 484:8
350:20 352:4,11	523:20 525:2	315:12 316:15	485:18 492:20
353:3,18 355:3	533:17,18 534:9	319:19,20	493:7,18
356:4 360:20	549:22 573:12	326:10 327:15	497:10,18
364:16 367:21	612:13 625:8	329:13 332:9	498:4,17 499:19
368:12 374:11	<b>simultaneous</b>	333:9	500:4 505:3,6
375:18 382:17	455:1	334:7,15,19,22	510:20 513:5,7
<b>significance</b>	<b>simultaneously</b>	335:3 338:4,12	515:3 521:15
468:15	421:12 429:4	339:12	528:3,5 571:16
<b>significant</b> 314:21	<b>Singer</b> 300:10	341:11,14	575:17
462:17 469:10	509:17	347:10,17	576:2,9,18 577:5
560:3 563:6	<b>single</b> 349:5	348:15,21	578:14 580:7
567:4 578:20	355:6,7 359:18	358:14 360:22	584:19 585:4,6
586:4 607:6,7,20	376:13 392:20	362:5,8	586:1,2,14 587:3
611:22 613:22	431:3 463:17	363:10,16	588:1,5,6,11,16
614:4,6	468:18 497:4	365:11,14,19	589:7,8 590:6
<b>significantly</b>	<b>singles</b> 374:16	366:5,15 367:1,8	591:13 592:2,19
528:19 603:4,7	454:1	368:9 370:17,18	593:1 594:11,18
604:13	<b>sir</b> 357:13 475:7	371:14,22	596:13,21
<b>signing</b> 314:8	527:11,14 530:7	372:3,18	599:11 600:17
319:18	531:16,19 533:5	373:11,17	602:17,20
<b>silence</b> 430:15	569:5,14 594:6	375:20	605:22 607:7,19
<b>silly</b> 340:9	618:19	381:14,16	610:21 613:12
<b>similar</b> 383:14	<b>Sirius</b> 348:18	385:16 394:20	616:18 617:9
402:12 521:22	365:1 400:2	395:6 396:14,21	620:8 622:6,13
<b>simple</b> 533:15	419:6 496:13	397:6,13,14	623:12,20
536:16 538:17	500:12 501:4	399:5,8,13,14	<b>SiriusXM's</b> 328:1
544:16 559:3	503:17 504:10	400:6 407:14	338:4 339:18
561:10	511:9,11 527:18	408:7 413:4	399:15 431:4
	529:14 530:19	420:22 422:8	458:13 471:15
	531:13 532:5,10	423:15 424:10	572:17 574:16
		430:18,20	575:1 577:5
		434:21 435:21	601:21 603:20
		436:3 437:3	604:20

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 54

<b>sit</b> 384:22 523:22 530:16 <b>site</b> 376:18,22 378:3,6,10,16 379:1,8 380:8 452:18 454:3 <b>sites</b> 383:14 403:4 <b>sitting</b> 439:7 440:22 579:19 <b>situation</b> 345:5,21,22 346:3,13 516:14 517:12 <b>situations</b> 504:5 <b>six</b> 309:22 519:12 559:10 574:2 622:16,17 <b>sixth</b> 598:12 <b>size</b> 364:14 <b>skewed</b> 371:17 <b>skill</b> 586:13 <b>Sky.FM</b> 413:13,19 <b>Slacker</b> 400:10 402:18 403:22 404:1 507:5,6 534:16 587:14 <b>sleep</b> 364:5 <b>slide</b> 575:16,19 576:9,21 577:4 590:16 591:9 593:6 <b>slightly</b> 363:11,18 417:18 421:10 552:10 <b>slow</b> 544:4 552:13 557:5 <b>small</b> 313:12 338:14 355:4 357:17 358:13	363:1 364:1 366:10 413:3 469:8 470:16 491:2 499:6 500:13 528:9 552:1 <b>smartphone</b> 533:16 548:2 <b>smartphones</b> 533:20 535:22 <b>Smith</b> 621:1 <b>smoothly</b> 547:20 <b>snapshot</b> 524:2 <b>so-called</b> 354:21 516:1 <b>soda</b> 494:15 <b>software</b> 536:16,20,22 537:10 539:2 544:17 545:11 548:17,20 <b>sold</b> 452:16 512:13,15 562:11 <b>solution</b> 545:9 <b>Solutions</b> 512:5 <b>somebody</b> 340:8 359:21 365:11 388:7 493:9 504:5 621:18 <b>somehow</b> 325:10 423:15 481:16 <b>someone</b> 437:18 546:17 <b>somewhat</b> 350:13 458:1 525:10 <b>somewhere</b> 560:16 <b>song</b> 351:15	<b>songs</b> 454:7 <b>Sony</b> 404:9 405:7,20 <b>sophistication</b> 471:9 <b>sorry</b> 344:9 350:4,5 363:12 366:4 391:1 428:8 436:12,14 440:16 448:18 474:18 484:22 490:5 495:2 500:22 515:7 520:9 527:11 545:13 556:15 567:8 571:19 577:12 580:20 582:3 585:11,14 588:21 591:19 592:4 595:20 597:10,14 598:17 600:4 603:6,9,10 608:10 609:9 618:10 <b>sort</b> 308:8 326:18 333:15 351:3,18 352:21 353:1 366:22 372:15 376:14 383:1 390:5 407:12 416:13 429:22 433:6 436:22 437:1 438:19 441:10 443:1 452:19 468:9 494:16 496:8 521:22 546:10 623:2 <b>sound</b> 307:10 333:8 342:16 345:20 346:12,19	350:15,16 353:2,19 354:6,8,21 358:14 365:2,5 366:3,8 367:15 368:11 370:4 371:2 373:4 374:10 385:15 430:11 441:18 457:7 587:1 619:2 <b>SoundExchange</b> 301:2 304:1 311:10 313:15 314:2 315:2,9 319:4,7,14,16,19 320:1,12,19 321:15 322:3,16,18 323:1 325:5 326:17 331:12 332:7 337:15 341:18 344:19 347:4 357:10 366:4 377:2,17 378:1 390:11 394:16 414:16,17,21 443:22 444:5 450:13 458:11 460:17 461:1,6,22 463:16,19 464:22 465:20 466:11 470:7,9,11 472:2 476:18,22 477:6,9,12 480:10,14 514:19 570:9 571:9,14 575:14 580:21 581:4 582:7,9 589:4,9 591:2,4 596:4,10
--	--	--	---

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 55

597:2 598:6,8 608:5,14 616:16 621:16 623:15,18 <b>SoundExchange's</b> 321:13 324:15 329:14 460:1,15 464:6 474:12 <b>source</b> 378:3 463:14 <b>sources</b> 584:4 <b>Southeast</b> 299:17 <b>spare</b> 532:10 614:15,17,18 <b>speak</b> 314:2 385:4 591:17 609:16 619:21 <b>speaks</b> 592:6 <b>special</b> 365:7 516:15 529:5 <b>specialize</b> 372:12 373:12,13 <b>specialized</b> 356:18,20 357:2 <b>specializes</b> 355:12 <b>specials</b> 375:15 <b>specialty</b> 362:16,17,18 <b>specific</b> 321:6 327:20,21 346:17 351:12 357:3 450:8,9 481:10 595:12 612:6 <b>specifically</b> 328:21 376:5 449:8 451:20 514:22 552:19 579:11 590:6	<b>specifies</b> 342:12 <b>specify</b> 342:15 <b>spectrum</b> 482:10 <b>speed</b> 546:8 <b>spend</b> 438:5,8,14 561:1 <b>spending</b> 406:12 <b>spends</b> 438:13 <b>spent</b> 511:18 539:18 551:5,9 562:4 <b>spills</b> 482:7,8 <b>spin</b> 545:7 <b>sponsor</b> 622:10 <b>sponsored</b> 612:3 <b>sponsoring</b> 621:11,12 <b>sports</b> 529:4 587:10 <b>Spotify</b> 449:8 450:22 451:21 452:1,2,3,5,6,10 453:13,16 454:13 534:17 535:15 <b>stack</b> 320:11,18 321:12 322:2 324:14 385:20 <b>stacked</b> 319:1 <b>stacking</b> 320:13,21 321:5,8,19 322:7 <b>stage</b> 408:9 550:7 <b>stages</b> 544:20 <b>stake</b> 464:17 <b>stakes</b> 365:9 <b>stamp</b> 581:6 589:6 <b>stand</b> 318:16	482:4,11,13,14 517:11 518:4 <b>standard</b> 343:11 <b>standing</b> 427:18 461:4 <b>standpoint</b> 504:9 505:2 <b>stands</b> 482:6 596:12 626:18 <b>STANLEY</b> 300:4 <b>start</b> 416:2 418:3 499:2 541:20 554:12 <b>started</b> 353:15 <b>starting</b> 361:22 369:4 409:15,16 413:2,3,6 416:21 448:12 <b>starts</b> 416:17 443:11 <b>state</b> 352:1 396:2 510:16 558:15 <b>stated</b> 394:15 460:9 595:11 606:16 <b>statement</b> 358:5 416:18 447:11 476:17 500:20 612:13,14,16 615:1,3,8,14 620:9 623:4 625:12 <b>statements</b> 340:22 463:3,14 516:19,20 522:10 525:3,4 554:17 573:10 622:6 <b>states</b> 299:1	613:15 <b>stating</b> 340:18 <b>station</b> 354:8 367:1 380:2 430:11,20 551:10 <b>stations</b> 535:12,13,16 <b>statute</b> 321:17,18 <b>statutes</b> 467:19 <b>statutory</b> 311:6 313:4,8 333:15 335:8,12 338:13 341:18,22 345:7 347:11 385:8,11 387:5,10 404:10 405:19 406:19 462:10 463:17 466:21 476:4 477:7 478:10 <b>stay</b> 539:22 544:6 563:10 568:7 <b>stayed</b> 624:15 <b>steering</b> 537:14 <b>stenotypy</b> 628:5 <b>step</b> 407:10 408:16 493:18 <b>Stephen</b> 620:21 <b>steps</b> 305:18 <b>Stern</b> 588:12 <b>Steve</b> 580:11,14 581:7,18 <b>stick</b> 519:20 <b>sticking</b> 380:9 381:17 <b>stood</b> 392:1,3 623:3 <b>stop</b> 308:6 595:4
---	--	---	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 56

<b>store</b> 495:17	617:17	600:9,11 601:15	397:14
<b>stores</b> 436:22	<b>styling</b> 429:10,14	<b>subscribing</b> 424:1	493:13,14
<b>story</b> 370:11 420:1	<b>sub</b> 617:22 618:5,9	560:15	496:9,11
480:16	<b>subject</b> 355:18	<b>subscription</b> 299:6	588:19,22
<b>strategy</b> 358:10	380:9 381:17	396:17,18,19	592:19 593:4
452:19 560:19	382:19 396:22	397:4 398:10	<b>substitution</b>
<b>stream</b> 438:1	456:16 500:10	399:10 410:14	443:10 453:9
585:21	516:6 522:20	411:3 412:5,14	454:20 455:2
<b>streaming</b> 477:2	563:13	413:20 414:2,3	481:19
485:18 501:10	<b>subjects</b> 552:10	418:3 422:10	498:1,4,7,8,10,1
580:8,14	<b>submission</b> 625:21	528:6 543:12	2,17,22 499:4
<b>Street</b> 398:22	<b>submitted</b> 305:20	560:6 565:17	501:21 505:16
619:7	306:4 511:17	585:10	<b>substitutional</b>
<b>strengths</b> 531:3	621:11	<b>subscriptions</b>	448:13 451:12
<b>strict</b> 466:19	<b>subscribe</b>	528:8 565:13,14	587:4 588:1,10
<b>strictly</b> 370:19	365:14,22	<b>subsequent</b> 375:22	<b>substitutionality</b>
441:19 516:4	437:18	477:11	591:13 592:1
520:14	442:15,16	<b>subsequently</b>	<b>subtract</b> 426:14
<b>strong</b> 358:22	543:12	449:4	<b>succeeding</b> 557:9
389:17 553:22	560:14,16 568:4	<b>subset</b> 441:7	<b>success</b> 367:15
<b>strongest</b> 358:19	588:5	<b>subsidiary</b> 624:3	<b>successful</b> 562:19
359:8	<b>subscriber</b> 395:6	<b>subsides</b> 442:6,7	563:21
<b>struck</b> 553:1	437:21 440:5	<b>subsidize</b> 540:6	<b>sufficient</b> 490:12
554:11	531:6 564:15	546:21 552:4	491:18 497:11
<b>structure</b> 325:21	565:4 577:6	<b>subsidizing</b> 540:9	<b>sufficiently</b> 499:6
333:21 482:9	602:4 603:20	<b>subsidy</b> 552:7	<b>suggest</b> 477:17
492:3 493:11	604:21 618:11	<b>substantial</b> 309:18	519:7 578:18
<b>structured</b> 424:7	<b>subscribers</b>	462:10 613:16	<b>suggested</b> 325:4
<b>struggling</b> 494:8	411:15	615:5	453:4
<b>stuck</b> 525:20	437:14,16 438:6	<b>substantially</b>	<b>suggesting</b> 325:10
<b>studied</b> 453:7	527:7	363:22 394:22	392:19 393:6
<b>studies</b>	528:12,14,22	396:9 403:12	497:22
449:14,17,22	568:20 571:1,3	<b>substitutable</b>	<b>suggestion</b> 311:15
450:6,18	572:13 574:17	351:16 591:18	<b>suite</b> 301:8 588:7
<b>studio</b> 345:18	575:17 578:14	<b>substitute</b> 367:8	<b>suited</b> 362:7
<b>stuff</b> 351:15	589:8	397:13 493:20	<b>summarize</b> 433:11
366:18 401:21	599:11,16,17	494:1 593:9	464:4 549:17
412:19 506:14	600:5	<b>substituted</b> 351:22	<b>summarized</b>
	602:1,14,21	<b>substitutes</b> 391:9	
	616:18 618:9		
	<b>subscribership</b>		

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 57

433:14	<b>surface</b> 488:2	544:9,15,16,18	418:18 444:7
<b>summary</b> 415:13	<b>surprise</b> 326:11	549:21	484:9 485:16,20
<b>summation</b> 471:1	561:9	<b>system</b> 359:3	490:8 494:12,15
<b>Superior</b> 577:5	<b>surprises</b> 575:1	412:10 431:4	503:15 505:15
<b>supermarket</b>	<b>survey</b> 414:9,12	529:12,17	508:8 552:17
495:7	415:14 416:2	541:11 546:10	554:13,14 558:4
<b>supplement</b>	417:8,10	551:6 584:6	561:2 569:12
551:10	418:1,14 419:4,9	<b>systematic</b> 455:13	581:12 591:12
<b>supplemented</b>	420:14	<b>systems</b> 529:16	599:21 600:1,3
530:2	421:13,16		613:9
<b>supplements</b>	422:16,17,19	<hr/> T <hr/>	<b>talks</b> 485:21
523:12	424:7 425:16	<b>T.J</b> 375:15	<b>target</b> 357:3 358:3
<b>supplier</b> 494:13	426:22 428:2,4,6	<b>table</b> 306:16,17	540:18
499:21	444:6 446:15	385:5 415:20	<b>task</b> 519:10
<b>suppliers</b> 500:3	449:1 485:16	433:14,20,21,22	<b>taste</b> 542:8
<b>support</b> 516:18	487:16 590:7	434:19 439:3	<b>tastes</b> 353:10
573:20	<b>surveying</b> 561:2	440:4,14	<b>team</b> 509:15 510:1
<b>supportive</b> 319:11	<b>surveys</b> 450:6	<b>takeaway</b> 389:17	<b>Teaneck</b> 380:4
<b>suppose</b> 366:13	<b>survive</b> 340:13	<b>taking</b> 363:17	<b>technical</b> 391:13
494:22 505:21	<b>suspect</b> 393:8	448:1 507:18	530:12
<b>supposed</b> 331:11	<b>sustainable</b> 564:10	537:17 545:16	<b>technicality</b>
379:17 495:5	<b>sustained</b> 575:10	<b>talent</b> 584:3	620:15
<b>surcharge</b> 420:21	605:6	<b>talk</b> 326:16 331:3	<b>technologically</b>
421:11	<b>SUZANNE</b> 300:3	332:19 346:22	623:7
<b>sure</b> 324:3 343:1,3	<b>sworn</b> 305:5 432:6	353:5 381:20	<b>technologies</b> 549:2
344:10 356:14	510:9	382:20 388:11	550:21
363:14 383:17	<b>SX</b> 461:8	397:22 398:3	<b>technology</b> 305:10
384:18 385:21	<b>SXM</b> 339:9 360:1	410:4 416:2	516:1,11 522:21
386:11 390:8	461:2,8 492:1	459:15 467:19	523:5,21 526:13
431:10 432:21	499:5 504:21	484:5 491:7,10	528:20
435:10 439:16	<b>SXM_CRB_DIR_</b>	498:15 501:2	530:15,20,21,22
485:6 508:3	<b>20637</b> 608:16	529:4 542:7,10	531:7 533:14
512:10 538:7	<b>SXM_CRB_DIR_</b>	549:12,14	537:22
542:13 551:11	<b>34101</b> 581:6	552:16 618:17	538:16,18 541:5
559:1 578:22	<b>SXM_CRB_DIR_</b>	<b>talked</b> 312:7 314:8	542:6,9
593:10 594:22	<b>42774</b> 589:6	400:19 467:10	543:20,22
595:13 618:1,2,6	<b>symmetric</b> 335:3,6	492:10,11 501:3	544:5,21
<b>surely</b> 389:19	<b>sync</b> 536:18	<b>talking</b> 311:16	545:4,5,7,14
		323:6 324:9	546:13,16
		325:12,14 358:8	548:10
		364:14 373:16	

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 58

549:19,20 550:8,11,14 606:14 <b>television</b> 512:17 522:2,18 524:22 610:8 <b>tempting</b> 331:8 <b>tend</b> 517:7 <b>tends</b> 548:8 <b>tenfold</b> 361:17 363:5 <b>tense</b> 311:22 312:1,10 <b>tenth</b> 356:6 <b>term</b> 563:15 602:19 603:19 <b>terminology</b> 320:13 552:14 <b>terms</b> 335:11 353:8 355:21 356:3 362:2 370:13 372:18 386:2 399:7 402:3 423:21 <b>term's</b> 623:2 <b>Terms</b> 299:6 <b>Terrence</b> 621:1 <b>terrestrial</b> 399:14,16 442:20 482:19 501:5,9,17 526:18 529:17,22 530:3 551:10 554:3 555:9 561:12 587:9 618:18 619:12 <b>terrible</b> 362:12 <b>test</b> 386:19 387:15	450:12 <b>tested</b> 317:15 524:21 <b>testified</b> 305:5 390:14 432:6 462:19 481:6 510:9 516:9,17 570:10 572:9 605:19 614:3 <b>testify</b> 380:22 381:1 384:8 393:19 475:19 582:2 <b>testifying</b> 475:21 <b>testimonies</b> 620:21 <b>testimony</b> 305:18 306:2,4 308:8,11,14,16,2 2 309:9 310:13 312:19 325:5 329:9 330:13,14,15,21 332:14,16 339:1 367:14,21 368:5,14,18 369:4,11,13 371:3 373:3,16 378:4 379:10 381:19 383:10,13 389:11,16,22 390:13,22 391:2 392:11 393:15 394:8 397:20 400:21 404:8,13 416:7 417:1 433:18 443:10,11 444:7 449:8 451:11 457:11 458:9 459:6 461:3 463:1 465:12,16 469:13 471:2	479:14 484:5 485:16 486:9 491:6 494:9 511:16 513:6,13,18 514:4,9,11,12 515:19 516:9 517:16 518:12,14 520:20 521:12 522:19 523:13 542:7 547:22 548:7 549:7 552:11,20 553:2 557:3,10 558:14 564:17,22 566:3,4 572:7 573:6 574:12,13,19 578:1,12 584:17 592:1 601:13 603:17,18 605:20 606:1 618:17 619:11 620:12,19,20 621:10,14,18,21 622:4,9,11,12,15 ,17 623:12,14,19,22 624:14,21 625:3,22 628:3,4,8 <b>tests</b> 563:4 <b>tethered</b> 545:9 546:13 547:19 548:19,20 549:19,20 <b>tethers</b> 545:11 <b>text</b> 415:20 591:10 <b>thank</b> 305:14,19 306:20,21 307:1 318:18 324:7 381:5 389:5	404:19 421:22 432:12 433:3 444:17 455:14,19,21 456:7 461:9,18 474:14 476:9 483:13,15,18 484:1 492:7 508:13,22 509:1,12 510:2,3 513:2,14 520:5,6 521:4,7,17 526:6 538:11 554:6 568:17 569:15,16,18 581:21 584:14 595:17 598:3 605:16 618:12,13 619:14 627:12 <b>Thanks</b> 577:19 <b>that's</b> 307:12,16 309:3,5,14,21 310:13 311:20 312:1 313:7,10 314:19 315:11,18 316:4,16,22 317:2,6,12 318:3 319:5,13 320:2 321:21 325:8,11 326:22 327:1 328:12 329:11,22 333:15 334:4,9,14,20 336:19 337:15 338:18 339:22 340:13 342:3,6 343:2,10,16,19 345:10,14,15 346:2,5 347:5,13,14 348:16 349:5
---	---	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 59

352:15 353:6	482:15,21	333:14 336:8	362:10,16
355:5 357:4,5	487:11 490:1	337:21 341:4	364:11 367:16
358:1,21 361:7	493:21 494:7,22	345:14 348:19	375:3 399:18
363:9,20	495:16,22 496:8	349:3 354:14	401:4 404:2
364:9,11 367:17	497:5 498:22	358:2,3	419:7 423:2,3
369:1,14 372:14	501:6,11 504:13	362:15,17	424:11 425:9
375:5,13 379:20	506:3,11,12	365:13,14,15	426:21 427:1
380:1 381:15	508:14 513:5	370:9 375:11,12	439:20 442:13
384:11 385:19	516:20 517:19	376:19	447:22
387:3	518:4 519:15	380:5,6,21 381:9	452:19,20 487:9
394:2,11,18	524:4 526:3,18	383:19 386:4	492:12 496:10
395:11,13 396:6	529:1,7,14	389:7 398:18,19	501:10 504:15
397:16,17	531:17 533:14	399:5 407:6	506:7,14
398:8,15 400:19	536:13 539:7	410:10 411:4	508:10,11 524:4
401:7,8 402:5,20	540:21 542:4	412:16,18	525:1,5,7,8
403:13 405:12	543:22	418:14 427:7,11	530:17 534:3,5
406:3 407:2	544:11,19 548:3	436:1,2 438:10	540:3 541:15
408:9,19	554:6 555:12	440:13 441:13	547:2,14 563:7,8
409:9,22	556:8 569:11	445:3 449:22	579:17 591:17
410:3,17,18,19	575:19 576:3	451:4 453:9	606:18 612:1
412:8,9,13,18	578:2,16,17,22	454:20 462:5	614:13 622:15
413:15 414:10	579:20 585:1,3	465:17	<b>third</b> 390:12 433:5
415:13,16	586:1,16 591:14	468:10,11 469:2	472:20 527:4
417:3,19 418:15	592:17 593:13	471:19 479:18	598:20,21
421:16	596:17 599:13	482:6 487:20	610:18
422:11,13,18	601:11 604:22	489:15 490:15	<b>third-party</b> 457:20
424:6,12,22	607:4,19 612:19	493:9 497:19	609:15
425:2,3,15,19	614:14 615:1	498:12 503:1	<b>Thompson</b>
426:2,8,12	616:16 618:2	507:20 508:9	512:2,20
428:10,18	<b>theater</b> 372:9,10	518:21 523:10	<b>thorough</b> 455:13
430:7,8	<b>themselves</b> 324:17	524:17 532:8	<b>thousand</b> 523:1
433:12,15	357:2 385:4	541:8 552:7	<b>thousands</b>
437:1,5 438:2	500:11	555:16 558:1	413:6,10
445:2 446:5,7	<b>theory</b> 313:11	564:3,4 574:1	<b>threat</b> 585:1,3
447:21	317:7,12,13	575:1,7 597:12	587:20,21
449:16,20,21	<b>thereafter</b> 628:6	606:8,10 614:20	<b>three-year</b>
450:3 451:16,19	<b>therefore</b> 497:19	625:22 627:9	566:13,14
452:17 453:7	503:22 506:9	<b>they'd</b> 315:4	<b>throughout</b> 573:1
454:8 455:12	609:17 611:22	<b>They'll</b> 351:11	<b>thrust</b> 423:6
458:17 460:20	<b>there's</b> 309:10	<b>they're</b> 319:18	574:12,13
463:7 464:17	316:19 321:6	330:6 335:6,19	
465:11 467:8	322:3 325:18	354:5 355:8	
471:3,4 473:4	327:1,2 331:20	356:18 357:6	
476:11 479:12		361:22	
481:9,18,21			



Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 60

<b>thumbs</b> 586:10	<b>com</b> 300:17	344:19 457:14	443:22 444:5
<b>Thursday</b> 324:4	<b>tomorrow</b> 519:22	<b>transactions</b>	450:13
581:7 627:15	626:16 627:1,7	333:1,3	461:1,6,10,13
<b>tie</b> 549:8	<b>tool</b> 569:6,7	457:6,12,16,18,2	471:22 472:3
<b>tier</b> 543:12,14	<b>top</b> 357:14,15	1 459:4 460:18	473:22
<b>tiny</b> 355:9 356:11	370:8 373:19	464:15 472:14	474:2,6,20
357:18 362:16	376:16,21	495:5	483:3,11 513:5,7
363:7 469:1	379:10 381:21	<b>transcript</b> 323:4,9	521:15 559:7,13
470:18 499:17	382:1,11,15	465:4 608:21	560:7,8,13 571:9
541:3	445:9 448:4	609:15	580:21 582:9
<b>title</b> 448:4	451:13 472:9	610:1,3,11	589:9 591:4
<b>titled</b> 479:18	490:3 551:20	611:12 612:14	596:4 598:8
<b>T-Mobile</b> 540:3	<b>topic</b> 520:10 583:2	623:19,22	608:5 616:17
551:18	<b>topmost</b> 472:21	<b>transcripts</b>	<b>trials</b> 559:4
<b>today</b> 309:12	<b>total</b> 355:21 356:3	611:1,4,6	<b>tribunal</b> 300:2
384:22 492:2	374:21 398:12	<b>transferring</b>	516:5
523:3,21	409:2,9 419:15	336:18	<b>tried</b> 397:7 471:3
528:11,21 531:4	429:14 486:6,7	<b>translate</b> 497:16	489:22 621:17
532:2 533:20	599:10,16	<b>translates</b> 447:20	<b>triple</b> 361:17
534:3 535:4,5	601:7,8,18	448:6	<b>tripling</b> 363:4
537:16 540:19	<b>touched</b> 550:17	<b>transmissions</b>	<b>TROKENHEIM</b>
542:20 544:20	<b>toughest</b> 543:10	307:22 358:14	302:4
545:21	<b>touts</b> 586:15	360:22	<b>trokenheim.matth</b>
546:2,12,20	<b>toward</b> 398:3	361:6,15,18	<b>ew@arentfox.co</b>
552:3	490:4 549:13	<b>transmit</b> 537:8	<b>m</b> 302:10
553:9,11,13,20	<b>towards</b> 415:8	<b>transmitted</b>	<b>trouble</b> 427:19
555:11,17	445:3 504:22	412:16	436:13 564:7
556:5,8 559:18	<b>Toyota</b> 523:19	<b>transmitter</b> 537:6	<b>truck</b> 607:1
560:16 563:5	524:6 536:19	<b>transportation</b>	<b>trucks</b> 488:4,5,7
566:1 567:19,22	537:20,22 538:1	488:3	<b>true</b> 309:21
568:1 569:7	<b>tracks</b> 453:22	<b>treat</b> 478:22	315:18,21
570:15,18,20,22	<b>trade</b> 314:1,9	<b>treated</b> 434:8	317:12 318:3
578:2,4 586:7	340:2,10,16,18	<b>tremendous</b> 623:6	334:14 337:16
587:7,9,12	473:13 474:1	<b>trend</b> 516:10	339:20 345:14
601:13 606:20	504:6 517:3	<b>trial</b> 303:11 304:1	347:15 348:12
607:9 619:8	<b>tranche</b> 311:9	322:16,18 323:1	349:5 359:1
621:5	<b>transacted</b> 464:16	357:10 377:2,17	366:7 402:5
<b>today's</b> 619:6	<b>transaction</b> 333:9	378:1 414:16,17	426:9 430:8
<b>Todd</b> 300:8 305:16		422:9 423:13,16	480:7 486:15
<b>todd.larson@weil.</b>			489:20 495:18
			497:12 498:19

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 61

504:4 506:11,12 518:18 519:15 525:5 526:3 564:15 565:18 599:10,13 607:4 628:7 <b>Trust</b> 562:4 <b>trusty</b> 509:15 <b>truth</b> 516:18 518:8 522:5 525:10 <b>truthful</b> 417:11 419:10 <b>try</b> 328:6 335:15 356:19 362:19 378:18 427:19 459:14 465:1 556:7 562:5 583:18 <b>trying</b> 336:22 337:3 340:12 341:8 357:7 359:12 400:4 408:16 429:8,18 433:6 436:9 442:14 478:4 484:4 489:15 490:9 494:16 496:6 498:22 562:4 564:11 592:20 <b>tsunami</b> 604:12 <b>Tuesday</b> 543:3,4 <b>turn</b> 323:2 357:10 394:7 397:19 408:7 415:8 444:19 462:22 479:13 502:2 513:20 547:8 548:22 549:6 558:13 568:8 590:15 609:4	613:4 <b>turned</b> 309:19 332:18 532:9 601:20 <b>Turning</b> 488:21 <b>turns</b> 395:15 537:4 <b>two-and-a-half</b> 562:20 <b>two-fold</b> 308:12 <b>two-hour</b> 355:14,18 <b>two-thirds</b> 561:9 568:3,5,12 <b>two-way</b> 541:15 555:8 <b>type</b> 365:8 473:16 541:16 543:20 549:12 604:3 606:18 <b>typeface</b> 462:5 <b>types</b> 369:5 370:13 371:18 373:20 534:17 <b>typewriting</b> 628:6 <b>typical</b> 471:10 473:15 <b>typically</b> 520:12 549:4 <hr/> <b>U</b> <hr/> <b>U.S</b> 453:16 557:13 <b>ubiquitous</b> 430:15 525:7 579:13 <b>ubiquity</b> 365:15 430:11 <b>Uh-huh</b> 466:5 <b>Ukraine</b> 355:12,18 362:11	<b>umbrage</b> 526:2 <b>Um-hum</b> 374:19 405:9 505:20 <b>unavailable</b> 390:14,15 <b>unbelievably</b> 355:17 <b>uncertain</b> 336:14,19 <b>uncertainties</b> 603:16 <b>uncertainty</b> 316:19 336:8 507:21 <b>unclear</b> 579:4 <b>uncommon</b> 439:11,17 <b>uncountable</b> 412:22 <b>undercut</b> 468:4 <b>underlying</b> 449:1 489:17 <b>undermined</b> 490:17 <b>underprice</b> 469:19 <b>underscore</b> 558:17 <b>understand</b> 305:9,11 318:14 325:2 330:19 338:3 341:17 342:7 350:18 352:10 373:15 380:16 386:11 390:8 419:17 422:2 423:5 427:4 455:9 467:17 469:13 472:12 538:17 547:22	<b>understanding</b> 310:12 322:1 328:22 337:14 386:6 390:7,9,11,16 458:10,14 459:16,22 460:6,8 478:14,17 619:12 624:13 <b>understood</b> 312:20,22 <b>undertake</b> 481:15 <b>unfortunately</b> 525:9 <b>uniform</b> 344:2 466:12 467:4 469:15 480:17 <b>uniformity</b> 466:21 <b>unilaterally</b> 390:10 <b>unintended</b> 547:1 <b>unique</b> 438:19 497:19 570:11 585:21 <b>unit</b> 512:5,9 537:1 <b>unitary</b> 392:21 467:14 480:4 <b>UNITED</b> 299:1 <b>universal</b> 337:16 345:17 366:14,17,20 450:6,7,9 468:21,22 <b>universe</b> 352:5 <b>unless</b> 365:22 423:14 <b>unlike</b> 611:19 <b>unnamed</b> 472:22
---	--	--	--

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 62

<b>unpack</b> 397:2 485:8 536:11	588:10 590:6,7 594:18 617:7,15	558:8 574:14 587:11 597:6	<b>viewed</b> 373:4 390:15 538:8
<b>unquote</b> 323:14 477:14	<b>usually</b> 322:13 342:13 353:9 439:21	<b>vary</b> 535:1	<b>virtually</b> 546:15 551:7
<b>unraveled</b> 584:4		<b>vast</b> 392:16 553:18	<b>vis-a-vis</b> 555:8 574:15
<b>unregulated</b> 333:1	<hr/> V <hr/>	<b>vehicle</b> 480:11 537:13 545:20 546:4,18 547:4,7,8,12,21 549:22 562:11 580:15	<b>visualized</b> 523:4
<b>untrue</b> 615:8,14	<b>valid</b> 386:17	<b>vehicles</b> 524:3 528:20 539:21 545:3 546:22 550:6	<b>voice</b> 550:2
<b>unwilling</b> 463:12	<b>valuable</b> 336:20 505:3,9,11 506:12,15,22 507:12,19	<b>venues</b> 538:3 541:22	<b>volume</b> 299:7 468:5
<b>upcoming</b> 583:20	<b>value</b> 349:4,12,17 365:11 374:2 395:18 409:20 410:13 416:14 420:15 422:21 423:22 425:7,14,21 426:5,10,13,18 427:4,14,15 428:16 430:3,4,18 431:5 488:4,6 504:10 507:21 559:12	<b>verbally</b> 524:1	<b>voluntarily</b> 566:12 594:2,9
<b>update</b> 308:13,16		<b>verification</b> 369:16	<b>voluntary</b> 600:20
<b>updated</b> 308:17 380:18		<b>verify</b> 513:21 514:2	<b>vouch</b> 515:10 522:4,5 609:16 610:5
<b>updating</b> 308:8 309:5		<b>Verizon</b> 540:2 551:18	<hr/> W <hr/>
<b>up-front</b> 437:22	<b>valued</b> 424:4	<b>version</b> 378:9 380:22 381:4 444:10 523:19	<b>wage</b> 346:10
<b>upon</b> 354:7 357:19,20 371:15 416:17 420:4 429:5,16 470:19,21 488:11 619:18	<b>valueless</b> 430:22 431:4	<b>versions</b> 368:7	<b>wait</b> 305:11
<b>upstairs</b> 570:16	<b>variables</b> 429:22 487:21	<b>versus</b> 489:12 498:13 533:21 602:6,7	<b>waiting</b> 535:3 570:16
<b>URL</b> 381:9	<b>variants</b> 410:11	<b>veto</b> 331:20	<b>waive</b> 390:10
<b>usages</b> 445:9	<b>varied</b> 402:8	<b>viability</b> 563:17	<b>walk</b> 558:21
<b>useless</b> 430:22	<b>varies</b> 543:16	<b>video</b> 522:2 526:5 542:20 579:8	<b>walked</b> 355:16
<b>user</b> 395:10,14,22 407:19 409:2 417:7,8,11 418:10,13,19 419:9,11,15 466:2 501:20 546:19 577:10,13 578:15 579:22 580:3 585:14,20	<b>variety</b> 512:13 535:12 563:4 579:2	<b>view</b> 325:2 373:6 380:1 391:16 466:7 471:4 505:6,7 507:3 550:9 587:22	<b>Wall</b> 398:21 619:6
<b>users</b> 417:17 424:15 528:8 544:12 572:11 578:19 579:2,15	<b>various</b> 314:1,9 354:7 368:7 398:13 407:20 457:20 511:20		<b>warrant</b> 606:21
			<b>warrants</b> 516:15
			<b>Washington</b> 299:2,11,17 301:9 302:15
			<b>wasn't</b> 312:13 320:16 330:1 332:16 368:2 373:7 385:21 393:4 396:5 436:8 452:14 484:17 597:11

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 63

<b>watch</b> 542:22 543:1,3,4 547:14	<b>Weil</b> 300:12 620:7	<b>whatever</b> 328:21 346:7 402:10 412:20 415:19 418:6 422:4 479:3 493:5 535:13 538:22 547:15 555:3,4,11 567:17 574:3	525:3,4,5,7 537:5 564:6 568:2 579:7 580:6 591:17,21 593:4 615:13 622:1,5
<b>watched</b> 538:12 542:16	<b>welcome</b> 393:9		<b>whichever</b> 493:6
<b>ways</b> 352:10 354:19 410:8,10,12 436:4 454:20 561:16 583:18	<b>we'll</b> 377:2 404:4 429:11 505:18,22 511:17 526:5 569:8 613:2 626:9 627:8	<b>whatsoever</b> 618:22	<b>whim</b> 479:5
<b>weakness</b> 586:5	<b>well-known</b> 429:1	<b>wheel</b> 537:14	<b>whoever</b> 525:2 540:4
<b>weaknesses</b> 531:4	<b>well-taken</b> 557:1	<b>whereas</b> 345:16 356:20 463:11 490:17	<b>whole</b> 319:13 322:9 333:20 348:14 352:14 353:19 458:3 461:16 469:7 484:15 532:2 572:21 597:12 604:3
<b>Web</b> 376:18,22 378:3,6,7,16 379:1,8 385:9 386:2,13 402:12 406:8 454:3	<b>we're</b> 305:12 325:12 342:21 364:7 417:22 425:5 426:3 431:7 443:19 444:4 484:9 496:16 498:16 505:15 508:8 509:18 513:3 520:7 521:8 523:5 525:19 536:7,9 540:22 541:3 544:20 551:15 559:18 560:16 562:3,5,7 563:5 564:1,11 566:1 569:7 586:19 589:3 606:6 622:7	<b>Whereupon</b> 305:2 368:19 377:8 382:6 405:10 416:3 431:11 432:3 434:1 509:6 510:6 627:13	<b>wholesale</b> 612:9
<b>webcaster</b> 334:2 383:8 387:20 389:14 406:14 407:9		<b>whereby</b> 439:17	<b>whom</b> 507:1 510:19 588:8
<b>webcasters</b> 385:1,8 438:5,13 439:20		<b>wherever</b> 415:19	<b>Whoops</b> 433:19
<b>webcasting</b> 383:2 385:13 386:7 387:10 397:9 410:15 412:10 584:20	<b>we've</b> 306:4 346:13 377:22 434:7 444:4 445:20 446:3 479:9 513:17 516:12 517:1 535:20 539:14,18 548:14 551:5,9 552:16 562:4,19 563:21 565:22 598:13 614:10 625:2	<b>wherewithal</b> 393:7	<b>who's</b> 612:5
<b>we'd</b> 385:14 426:11		<b>whether</b> 309:11 311:19 313:18 317:17,18 329:19 330:6,7 331:21 336:17 347:20 352:11 353:17 366:9 367:16 370:5 371:9,10,21 372:17,20,22 375:21 381:3 384:9 400:2 413:17 424:10 428:3 430:5 441:9,11 446:15 447:17 471:18 475:14 491:16 493:6,8 503:7	<b>whose</b> 326:1 365:17 496:5 609:15 620:18 621:13,14 622:8 628:3
<b>Wednesday</b> 299:12			<b>wide</b> 316:6 512:13 524:7
<b>week</b> 360:2			<b>widely</b> 554:20
<b>weeks</b> 548:12 549:5			<b>widespread</b> 463:3
<b>weight</b> 411:15 525:15 550:10 572:15			<b>wild</b> 441:16
<b>weighted</b> 411:22			<b>WILLIAM</b> 300:3
			<b>willing</b> 307:9 335:2,19 386:19 387:15 389:3 416:9 417:14,15 457:16,17

Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 64

464:14,15 480:8 486:17 487:1,9 504:6 505:4 506:6 605:15 <b>willingness</b> 487:12 <b>Wilsterman</b> 620:22 <b>window</b> 453:2 <b>windowing</b> 453:3 454:17,21 <b>windows</b> 452:21,22 <b>Winfrey</b> 588:14 <b>winning</b> 563:5 <b>wireless</b> 534:6 537:4,9 547:8,9,10 579:16 <b>wirelessly</b> 533:16 <b>wish</b> 532:15 562:3 <b>Wisniewski</b> 300:4 355:15 362:13 380:11,14 381:5 388:9,16 389:1,5 418:16,22 419:16 420:18 421:3,6,15,22 432:19,22 433:3 483:20,21 484:1,14,19 485:2,10,15,20 486:2,8,12,15,22 487:13,19 488:13,21 489:2,13 490:3,7 491:5,10 492:4,7,9,18 494:7 495:2 496:12,18,22 497:5,21 498:6 499:9 500:2,7,18	501:1,12 502:1,5,15 503:2,9,12,15,21 505:5,17,21 506:16,22 507:16 508:2,7,13,16 518:7,16 519:2,9,14,19,20 520:6 527:9,12 591:19 592:3,7 595:3,9,17 616:7,10 618:15,20 619:14 <b>withstand</b> 320:3 <b>witness</b> 305:4,12 308:13,16 309:11 318:10 337:18,22 338:2 355:16 362:15 368:19 380:20 382:6,8 388:14,17 389:4 390:14 392:14 405:1,10,12 416:3,5 418:21 419:4,22 421:1,5,9,18 434:1,3 448:4 455:21 456:6 461:15 475:12,17 483:19 484:11,16,22 485:4,11,19 486:1,5,11,14,19 487:4,16,22 488:17 489:1,5,17 490:5,13 491:9,22 492:6,8,16 493:1 494:21 495:4	496:17,20 497:2,7 498:2,9 499:12 500:6,9,22 501:8,15 502:4,10,18 503:5,11,14,20 504:9 505:10,20 506:10,18 507:2,20 508:4,9,21 509:1,11 510:4,8 513:4 515:8,9,10,19 516:8,19 517:13 518:15,22 522:4,5 523:7,13 527:11,14 528:2 531:16,19 538:12 553:6 554:21 556:11 568:21 569:5,14 572:6,9,12,16 573:6 574:12,19 581:18 583:9,14 584:7,13 591:22 592:5,10 595:8,10 609:16,20 610:5,11 612:5,21,22 616:1 618:10,19 619:4,8,15 620:6 621:11,13,18 622:1,3,4,8,10 624:20,21 627:1 <b>witnesses</b> 303:2 373:17 458:10 519:16 620:12,18 622:6,17 623:12 624:8 625:5 626:16 627:9 628:3,5,8	<b>wonderful</b> 535:21 <b>wondering</b> 491:20 554:16 <b>wording</b> 328:21 359:13 <b>work</b> 317:3 345:19 346:1,9 370:9 <b>workably</b> 315:15 <b>worked</b> 459:7 595:1,15 <b>work-for-hire</b> 345:21 <b>working</b> 562:8 <b>works</b> 347:9 348:8 387:14 551:7,8,11 581:19 <b>world</b> 326:4 372:2 495:10 498:21 507:11 540:1 623:11 <b>worldwide</b> 512:19 <b>worried</b> 614:8,9 <b>worries</b> 539:10 <b>worry</b> 409:11,14,16 496:4 597:13 <b>worse</b> 313:19 522:1 <b>worth</b> 503:22 507:7 624:13 <b>would've</b> 392:9 <b>wound</b> 313:3 <b>wrestled</b> 493:22 <b>write</b> 566:22 <b>writer</b> 525:19 <b>writes</b> 320:15
--	--	--	---

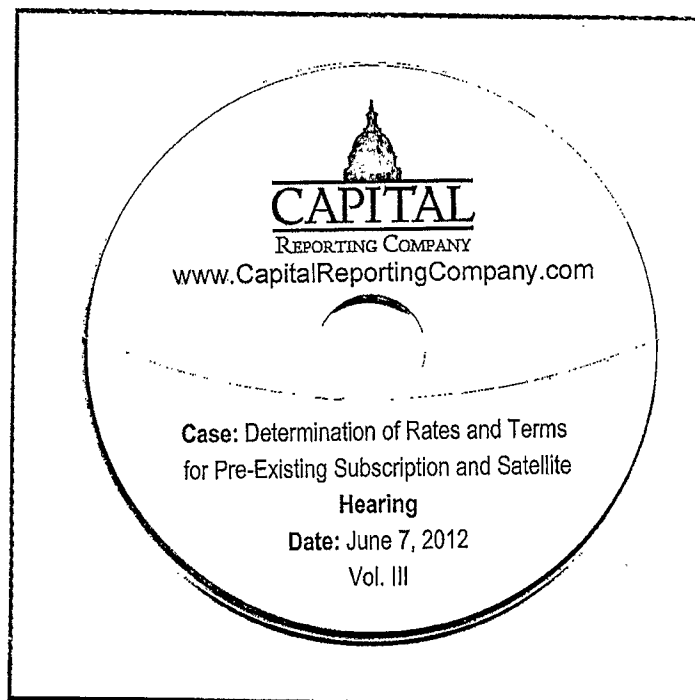
Capital Reporting Company  
Determination of Rates and Terms 06-06-2012 - Vol. II  
Page 65

<b>writing</b> 476:20 <b>written</b> 308:11 312:19 320:22 321:1 325:5 329:9 367:21 368:14 370:3 371:3 378:4 379:9 381:19 383:10 390:21 391:2 394:8 443:11 457:10 458:9 463:1 479:15 500:20 513:6,12,17 514:4,9,10,12 515:6,7 516:9 521:12 549:7 558:13 564:16 574:12 578:12 601:12 603:17 605:20 618:16 619:12 620:2,9,11,20 <b>wrong</b> 402:20 433:19 497:20 577:12 607:2 614:2,4 <b>wrote</b> 320:14 325:20 330:17 369:13 449:4,6 592:21 <b>WSA</b> 391:11 <hr/> X <hr/> <b>XM</b> 348:18 400:2 473:1 529:13 530:14 532:2,10 574:15 593:19 <b>XM's</b> 574:16 <hr/> Y <hr/> <b>yearly</b> 527:8	<b>yesterday</b> 389:10 390:20 391:2,8 400:20 404:22 420:21 492:17 573:4,10,14 <b>yet</b> 424:4 555:22 614:21 617:13,15 623:15 625:4 <b>York</b> 300:14 301:7 302:7 353:8 516:2 518:17 519:4 520:16,17 610:8 <b>you'll</b> 352:7 454:5 476:16 549:6 569:7 <b>yours</b> 364:21 <b>yourself</b> 330:21 332:13 514:14 551:3,4 620:5 <b>YouTube</b> 524:13,14 <b>you've</b> 312:5 314:16 331:7,11 338:9 368:22 406:6 415:5 420:3 434:5 449:20 467:10 535:20 538:14 542:11 543:3 569:12 <hr/> Z <hr/> <b>zap</b> 509:4 <b>zero</b> 338:2 360:3 363:20 424:7 425:1,6 430:18 535:9 <b>zone</b> 316:6	<b>Zynga</b> 454:1,2,9	
---	---	------------------------	--



## Complimentary MiniCD

Attached is your MiniCD, containing your ASCII, .PDF and .VDF files, which are complimentary with every Capital Reporting Company transcript.



(Works in regular CD drive.)

### Instructions for using your Visionary .VDF Transcript Viewer:

- 1) Insert the MiniCD in your disk drive.
- 2) Open the disk on your computer and you will see a folder with the deponent's name and the deposition date. Open this folder.
- 3) Click on the "Viewer Start" file to begin installation of the Visionary Viewer to your computer. It will take less than two minutes.
- 4) Once installation is complete, open the "data" folder to find your VDF, TXT and .PDF files. You can now open the VDF file in the Visionary Viewer.

Please call us if you have any questions!

We Never Take Your Business For Granted!  
[www.CapitalReportingCompany.com](http://www.CapitalReportingCompany.com)